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IN MEMORY OF

Theodorus Bailey Myers

AND HIS SON

Theodorus Bailey Myers Mason

LIEUTENANT-COMMANDER

UNITED STATES NAVY

1899

AN
(Burr, 4)
Knapp

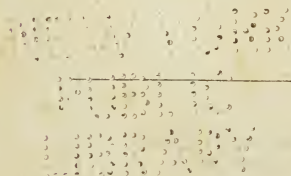


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THE
LIFE
OF
AARON BURR.

BY SAMUEL L. ^{Lorenzo} KNAPP.

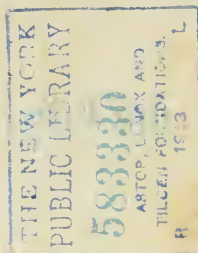
———— Populumque falsis dedocet uti
Vocibus.



NEW-YORK:
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1835.

S.G.



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INTRODUCTION.

ANCIENT history informs us that Osapho, a Lybian king, was anxious to have divine honours paid to him by his subjects, being surfeited by such as were merely human. This wish of his heart occupied his attention night and day; at last, he hit upon a stratagem to secure the homage due the gods for himself. He established an extensive aviary of those numerous talking birds found in warm climates. His slaves, in secret, taught these birds, whenever they were fed, or wanted food, to cry aloud, "Osapho is a god!" When all his birds were thoroughly instructed in this language, the whole flock were allowed to fly from their cages to the thickest groves, and when the shepherds and hinds came to repose in the shade, in the heat of the day, the whole Sylvan train were astonished to hear the birds pronounce distinctly the words "Osapho is a god." The inspired birds were tame, and had no fears of men; this increased their credit with their audience. The words were repeated from tree to tree, until the whole grove was vocal with the sound. The wonder-struck listeners hurried from the groves to the palace of the king, and fell down and worshipped him. The language of the birds was taken as oracular, when it only arose from a trick to gull the Lybians.

How easily might the scene have been reversed, if some enemy of the king had taught a flock of these talking birds, by the same art, to have said, "Osapho is a demon !" In all probability the ingenious monarch would have been massacred by his subjects, or have been driven into the desert, as hated by man, and forsaken by the gods.

In every age and nation there have been attempts, perhaps less harmless than this, to elevate the character of one, and to depress that of another. Demosthenes made use of all the thunder of his eloquence to drive Æschines from Athens, for he could not bear a rival ; and from Cicero's orations, read by us in childhood, we have formed erroneous opinions of Anthony. He was represented by the great orator as not only profligate, but without genius, or eloquence, possessing only brute courage. This was false, for Anthony, with all his profligacy, had a noble nature. The bold attack of Chatham—a more justifiable case—lessened the weight of the Walpoles, and for more than three quarters of a century, caused them to be misrepresented, and their characters misunderstood. It is only within a year or two past that we have fairly seen the truth. History is now beginning to do the Walpoles justice.

In our time, we have seen these instructed parrots who have been taught to declare this one a god, and another a demon. Not only has the parrot and the mocking-bird been so instructed, but birds also of a less honourable character. The vulture, and the raven, after his kind, have been taught to flap their wings and to croak on the left, to give some political soothsayers an opportunity of returning bad omens to the people,

against the election of certain men to office ; and, even more unkind still, the little songsters whose flight was not high enough to be within the circle of divination, were made to flutter and scream at a particular name. I leave the application of these remarks to my sagacious readers, while I make one or two observations on the inducements I have to write and publish this work. From my earliest view of men and their deeds, I have not unfrequently found that the maxim, "*vox populi vox dei*," was only true when that voice had been long considered, often reasoned upon, and patiently corrected. The first opinions of a people, like those of an individual, require cautious revision. The first sounds from lips that are honest are generally the voice of feeling, not of reasoning. There is hardly a valuable opinion that any man possesses, that has not passed the ordeal of mental examination many times. Knowledge, to be of value, like the fine linen of Egypt, must go through several severe processes, before it is fit for the purchasers. After the tiller of the ground has done his duty, the flax must be pulled, rotted, mangled by the break, scourged by the sharp knife, combed through the hatchel again and again, before it is fit for the distaff, in order to pass to the loom ; and even when woven, must be bleached, before it is used by the tasteful or the fair. The mass of mankind often go through life with crude opinions, hastily formed, and pertinaciously adhered to, for want of the energy of character necessary to examine them. As long as base coin passes current, no one will assay the metals he possesses for permanent wealth or convenient currency. The scrutiny only takes place when the fineness of the metal begins to be doubted. Some-

times, perhaps, there is no advantage in examining too closely. We lose by it frequently. Would the English gain any thing if they were to war with the prejudices of their sailors, or endeavour to make them believe that Frenchmen were sailors, as well as Englishmen? Prejudice is a tyrant of no ordinary power; he reigns long, and with an iron sceptre.

I have seen, too, that the tyranny of the many was greater than the tyranny of the most powerful and most ill-disposed individual. The single despot may be softened, or his rod broken, while many-headed error grows more hoary every day, and his wizard beard becomes more difficult to pluck. The errors of history are often cured by subsequent historians, but when once an individual is slandered, the slanders last long, and become a part of his name. The malignant exaggerate them, the careless repeat them, and some who have put them on paper, believing them at the time, will not be convinced of the truth afterwards; for it would injure the appearance of their record to correct their statements; and not a few are like the divine, who was convinced by the German biographer that the sweet poetess, Sappho, never was a courtesan, nor ever took the leap of Lucate, declared that he never would promulgate his belief, as it would spoil one of the best pages in his work on Greece. It requires but a short life to discover that the opinions of the mass of mankind are incorrect, and that the greater part of our impressions are not exactly honest, for they frequently take their hues from party spirit, in religion as well as in politics. Then, too, a writer gets credit for talents and acquirements much sooner by satire, than by eulogy.

The sarcastic lines of Pope and Young are remembered by thousands, when not a hundred can quote the sublimest portions of their higher and sweeter verse. It is the nature of man to love to look at the dark side of things, as well as to form incorrect opinions of events. They see a persecuted man—

——“Through the dim shade his fate casts o’er him;
A shade that spreads its evening darkness o’er
His brightest virtues; while it shows his foibles
Crowding and obvious as the midnight stars,
Which in the sunshine of prosperity
Never had been descried.”

Long before I had any personal acquaintance with the subject of the following memoir, my attention had been directed to him, as among the highest minds of our country; and I had, too, seen the baleful effects of party spirit on the minds of mankind. No man can make men his study long, without the discovery of that important truth. The biographer should examine all the opinions that have been expressed upon his subject; and he will almost invariably find, that *some are overrated, some underrated, and not a few grossly misrepresented* by all parties. When I became personally acquainted with Colonel Burr, I felt more anxious still to obtain further information in relation to some passages of his eventful life.

I had known, also, many acts of noble generosity, in his intercourse with men, and this formed another inducement for me to make inquiries about him. In every inquiry I have made of him, he has given me a manly answer, and, as I firmly believe, such a one as he honestly believed to be true. I would not attempt to defend any man’s whole mass of opinions, impres-

sions and reasonings, nor acts, and least of all a politician's, from childhood to the verge of life ; but, in one word, I can say that I think he has formed as sound opinions of the rise, progress, and administration of our national government, as any one of his compeers ; and I have conversed with many of them upon these matters within the last thirty years. The facts stated in this volume are well authenticated by documents in my possession, and from personal conversations. The opinions are such as I have formed by my own reasoning and reflection, and by examining those of judicious men. The late intelligent Major Fairlie, a soldier and scholar, was often heard to say, that Colonel Burr was the only politician that was never forgiven by those he once acted with or against.

Colonel Burr is still living, making his remarks upon men as well as passing events. Some of these I hope to preserve in this short memoir.

It is necessary that the memoirs of Colonel Burr should be written in his lifetime, as a great portion of his papers were lost with his daughter, on her passage from Charleston, South Carolina, to New-York, to visit her father, who had lately returned from his European tour. These papers would have thrown much light on the proceedings in this country, in bringing about the revolution, and in building up our institutions : for he was always a shrewd observer of men, in and out of power.

If a man is misrepresented by his biographer while he is living, the error may be corrected, or a false judgment may be reversed ; whatever is omitted may be supplied, and all redundancies pruned. The best biographies of the distinguished men of all nations,

have been written by materials furnished by the subjects themselves or families. From the letters and papers of Washington, and to the conversations of Napoleon, their lives have been written in the most acceptable manner. The accuracy of papers, and the spirit there is in conversation, should be united, to give a just conception of a high-souled portrait. The painter should see the smile, and hear the pleasant remarks of the man whose semblance he wishes to catch, and hand down to posterity.

If any man, or body of men, shall feel wounded by any remarks which he or they may find in this volume, the writer has only to say, that there was no intention of giving pain to any one, by any thing he might write. He is aware of the impartiality and delicacy requisite in touching upon some passages in the life of Colonel Burr; but, at the same time, he is also impressed with the opinion that this is the proper time to remove many mountains of prejudice which have been heaped upon the veteran. If in doing justice the writer should offend, he must take the responsibility. Every pen should have a moral courage about it; (and it generally has, when guided by pure motives;) but if this virtue should be lost from timidity, the pen should be snatched from the historian, as the soldier's sword is taken from him if he disgraces it by cowardice.

It is impossible for any writer to satisfy the tastes of all readers: some admire the wonderful, in a life; others are better pleased with historical events, and their connexion with the subject of the biographer; some love the facetious, others must have the ravings

of the hustings, or the tattle of the social circle, to satisfy them. There is always diversity enough in an eventful life for the judicious, and for them should all things be done, whoever else may read and comment.

LIFE OF COLONEL BURR.

IF the lives of ordinary men, when fairly written out, are of use and interest to the world, as wise men tell us they are, most certainly the memoir of one who has lived in a momentous period of our national history, and borne his part in all the memorable things of his day, must be acceptable to his fellow citizens. Some of the great men of every age and nation have written their own biographies and epitaphs, in order to give the world some facts and opinions which they feared might be overlooked when they were unable to correct errors or state facts. Among those of modern times were Franklin, Sir William Jones, Richard Cumberland, and a host of others since they have gone. There are some men who have been too active and busy in life to think of keeping a record of their doings or sayings; and if some one does not gather up the scattered reminiscences of them before their death, which may be corrected by inspection, however cursory, their biographies are, in general, scanty and unsatisfactory.

When an old statesman and warrior has passed to the confines of life, and all ambition with him is for

ever gone, he is the best historian of his time, for he gives his narratives without envy or dislike, and corrects the errors of those who have gone before him, having an opportunity of comparing the different views they have given, and of more distinctly forming his own. It is from the lips of such men, more than from all the volumes in the world, that human nature is to be made known. They have seen the events as they passed on, and in this calm hour of the setting sun of life, a thousand reflections, that were hid in the recesses of the mind while actively engaged in the affairs of the world, seem to come forth without bidding, and to speak eloquently of the past. No man in this country has done more, seen more, or said more to the purpose, than the subject of this short memoir. I have selected those passages for publication in the life of Aaron Burr, which I thought would give his countrymen the most correct idea of the man, and of his deeds.

Aaron Burr was born at Newark, in the state of New-Jersey, on the fifth day of February, 1756. He was the son of Aaron Burr, president of Nassau Hall, the only college at that time in New-Jersey. President Burr was a descendant from Jonathan Burr, a clergyman of Roxbury, in the commonwealth of Massachusetts, and colleague of Richard Mather, the father of Increase Mather, and grandfather of the well-known Cotton Mather, who caused the death of witches, and wrote upon comets, and gave the world wonderful biographical sketches of all those who had worshipped him.

The ancestor of Colonel Burr was indeed an extraordinary man. He was a pattern to all his bre-

thren, in piety, in zeal, and in purity of conduct. He was most fortunate in his biographers, a rare thing in this gossiping world. Winthrop and Mather, in early times, gave the world some account of him, worthy of his virtues, and their pens. In later times the learned and pious Harris, and the indefatigable antiquarian and historian, Savage, have exerted themselves to do justice to this meek and holy man. The eldest son of the elder Burr was graduated at Cambridge, in 1651. He was educated a physician and surgeon, and died of the lake fever, in the expedition against Canada in 1690, being attached to the army in his professional capacity. The father of the subject of this memoir, President Burr, was born in Fairfield, in the state of Connecticut, in 1714, and graduated at Yale College, in 1735. In 1742 he was invited to take charge of the first Presbyterian church in Newark. In 1748 he was elected president of the college of New-Jersey, which was removed from Elizabethtown, just before, to Newark, and which was removed to Princeton in 1757, where it has remained ever since. President Burr was a learned divine, and an eloquent preacher, and held a high character for purity and virtue, as well as for eloquence and fervour in the cause of religion. He continued to preach while engaged in the duties of instruction. He was called to take charge of the college before the first class had graduated. His acceptance of the office made it a popular institution. He was good tempered, apt to teach, an enthusiastic lover of letters, and spread that enthusiasm throughout the whole college. In 1752, President Burr married Easter Edwards, daughter of the celebrated metaphysician, Jonathan Edwards, by

whom he had two children, a daughter, who married Judge Rives, of Connecticut, and the subject of this memoir. The mother was a woman of fine talents, and had received an excellent education in the house of her father, from the extraordinary attention of both her distinguished parents. President Burr was an admirer of genius, oratory, and glowing piety; and when George Whitfield visited this country for the first time, President Burr received him with open arms, and accompanied him on his tour through New-England, and shared in his labours of love in Connecticut, Massachusetts, and New-Hampshire, to the great edification of the people.

By many, President Burr was more admired than Whitfield himself. Among the first pieces of ecclesiastical history the writer of this work recollects, is a eulogy pronounced by his grandfather upon these two great preachers, as the good old man remembered them as they passed through the country together. Whitfield was indeed a singular man. He had the zeal in religion that suited the mercurial temperament of the New-England people. His figures were all drawn from common life, and went directly to the heart of that primitive race. Every stirring accident, every melancholy death, even every joyous occasion, he turned to his purpose in the great cause of his Master. The good people of that day were full of comparisons; they likened Whitfield to the mountain torrent, and President Burr to the flowing of his own Connecticut river, as she meandered along through rich meadows, skirted by romantic highlands, One of the most distinguishing traits of our ancestors, was their love of great minds, and their freedom in dis-

cussing their respective merits. From the first hours of our national existence until the present day, all the talent and virtue of the country has, by common consent, belonged to the people, and they have spoken of them as they chose; and if their opinions were not always exactly correct, in general they were pretty fair. President Burr died in 1757, much lamented by the lovers of letters and religion. It was the fate of Colonel Burr to be deprived of his father and mother, grandfather and grandmother, all before he was three years of age. He was an orphan in the cradle. His maternal uncle was his guardian, and superintended his education; but guardians, however kind or intellectual, never form the minds of their wards: this alone can be done by parental care, or by extraordinary efforts of friendship. In infancy, young Burr was dipped into the waters of knowledge. At the age of eleven years he was prepared for college, but was not permitted to enter so young; but the next year, by special favour, he was entered. Even at that tender age he was in advance of his class, and had but little to do to keep up with them; and of course, like other boys, played and laughed much of his time away. Samuel Spring, D. D., late of Newburyport, was in college with Colonel Burr, and, part of their college life, was his chum. The doctor was a student of mature age, and had a provisorial power over Burr in his daily duties. He has often spoken of his young friend with more than ordinary feeling. He, in fact, prophesied his future genius, from the early proofs he gave of intellectual power in the course of his college life. Young Burr, after frolicking for awhile, saw his error, and seized his book with avidity, and pushed

onward to the head of his class, and obtained the highest academic honours the faculty had to bestow. He graduated at the early age of sixteen. His friends intended him for the pulpit, but he was allowed to pursue the charming wanderings of general literature, at Princeton and Elizabethtown, in his native state. Afterwards they sent him to Connecticut, to pursue his theological studies, with Joseph Bellamy, then the most popular preacher and instructor in divinity in that state, renowned for rearing great theologians. Dr. Bellamy had been intimate with young Burr's father and grandfather, and had conceived a high idea of the talents of his pupil. The doctor had stirred up the winds in Connecticut, and his piety, which burned with a holy ardour, seared with a flame every repentant sinner. No one could withstand him. He was naturally a liberal man, and tested the powers of his scholars by the Socratic method of instruction, taking special care that they should be taught to think as well as to read. His reputation as a preacher, his commanding eloquence, and his celebrity as an author, for he had written well on many subjects, made him irresistible to most minds, and what he advanced was taken for the profoundest philosophy and theology; but, to his mortification, he failed to inspire the descendant of the Edwardses and the Burrs with any enthusiasm for his creed. The pupil, with great adroitness, broke in upon the guard and fences of the divine, and proposed such singular questions, and met their ordinary answers with such acuteness, that Bellamy soon found that his pupil had a mind that could not be put into the trammels and fetters of the schools, and he intimated to Burr's friends that his residence in his school would be no longer agreeable. The student

who had given the sage teacher so much trouble to answer his inquiries, returned to New-Jersey, and while reviewing his classical studies had leisure for other matters. The colonies were at this time agitated with the great questions of taxation and all the rights of a free people, and the young philosopher seized the opportunity, and read all that could be found on these subjects of constitutional law, in company with Matthias Ogden, and others, who had been his college friends. Of Ogden, we shall have, hereafter, an occasion to speak. Burr's progress in these grave subjects was great, for to an active mind, he added a youthful ardour, that subdued difficulties with ease; and every thing conspired to make the young men of that day patriots. As the clouds threatened, and war became apparent to the visions of the political seer, the ardent youths of that age soon caught the forebodings in his prophetic face, and at once turned their attention to the arts of war and military science. Young Burr was not behind any of his peers in the acquisition of this necessary knowledge. He ransacked history for the description of battles, from *Miltiades* to *Wolfe*, and if he did not get much of military tactics from the historians, he imbibed no small share of military ardour from contemplating such heroic deeds and godlike actions of great men. When the first act of the great drama of the revolution was opened at *Lexington*, he was eager to be on the ground that had drank the blood of freemen, but was restrained by his careful guardian from commencing his military career at that time. When the battle of *Bunker Hill* was announced, and *Washington* had accepted the command of the army, and had repaired to

Cambridge, young Burr would not be restrained any longer, and, in company of his friend Ogden, he mounted his horse, slung his carbine over his shoulder, and set out for the seat of war. The spirit of liberty was abroad. Thousands of young men voluntarily flocked to head quarters, panting for the fight. Such an hour of enthusiasm may never again return, and should not be forgotten. A large army had been collected at Cambridge, in the vicinity of Boston—a brave and patriotic body of men, accustomed to hardships, patient of fatigue, and ready to risk their lives in defence of their rights as freemen; but their discipline was lax, and the men were idle, probably owing to several causes. One, unquestionably, was the ignorance of a large part of the officers, who had lately been selected for the occasion, and the other an apprehension that too strict a course of discipline would offend those unaccustomed to military or any other restraint. The several corps were not intimately acquainted with each other, for many years had elapsed since there had been any necessity of their acting together. Some jealousies had been excited among these troops, which required the address of all the intelligent officers to counteract. Mr. Burr was then a young volunteer, attached to no particular regiment or company, and had leisure to survey the whole, as well as the parts of the organization of the army. He had come to the seat of war with great expectations, for his imagination was inflamed with the deeds of valour which his countrymen had achieved, and with those in prospect in which he wished to share; but his mortification knew no bounds at the want of discipline in the camp. In this state of things, while prophesying

all the evils which happened in the next summer's campaign, he fell into a slow nervous fever, and was confined to his bed, when he heard it whispered that an expedition to Canada had been determined upon in Congress, by way of the Kennebeck river, through the woods to Quebec. There was something so bold and romantic in this, that it soon had a salutary effect on his disease, and he at once volunteered for the service. This was readily accepted, for although he had been modest and unobtrusive, his talents were known to many, and particularly to General Arnold, to whom the command of the forces destined for this duty had been given. The friends of Mr. Burr took every method to dissuade him from so rash an enterprise, as they deemed it, especially in his state of health; but all their efforts were unavailing; he shouldered his gun and marched. The place fixed upon for the embarkation of the troops was at the town of Newburyport, on the Merrimack, at the distance of forty miles from Boston, and quite out of the range of British observation.

On his arrival at this place, he had some leisure to visit the people, who had been acquainted with his father and grandfather, and took delight in paying attentions to the youthful soldier, who had relinquished the brightest prospects the country had to offer to superior talents, to take up arms in the defence of the cause of freedom. There were, a few years ago, several of the inhabitants of Newburyport, and the neighbouring towns, who well remembered his appearance, and his spirited conversation upon the great topics which at that time engrossed the attention of every one.

While at Newburyport, his guardian sent two men to conduct the volunteer home. The detachment showed their order, and intimated that they must, however unpleasant the office, do their duty in conducting him to his guardian. This was met with such coolness and decision of character that, hardy as they were, and they had been selected for their determination, they shrunk from the execution of their plan. They then produced a letter from his guardian, full of entreaties and arguments for his return, pointing out the dangers of the enterprise, and the folly of his adventure; but he was firm in his purpose, and the men departed, finding that persuasion and threats were alike unavailing. He had determined to take a decided part in the cause, and to make himself acquainted with the duties of a soldier. He thought that it might answer for the aged to stay at home, and urge others onward to the fields of danger, while they remained in safety, but this would not do for him. He was constitutionally as well as morally brave, and fight he must, and fight he would, if there was any fighting to be done.

He sailed with the expedition, and when they reached the head waters of navigation on the Kennebunk, he shouldered his gun, and shared the hardships of the march. They were six weeks in making their way to Canada, and no army ever suffered more in that time from hunger, wet, and cold, than this daring little band. A portion of the army returned for want of provisions; but Burr kept on with those determined to reach Canada, if they laid their bones under the walls of Quebec. He did not, however, suffer as much from hunger as others, as he had from child-

hood brought himself to a most abstemious diet, and therefore felt less from hunger than any one in the camp ; but he saw and commiserated their sufferings, which he had no power to relieve. He has always borne testimony to the fortitude, firmness, and patriotism of those hardy troops. He gives Arnold no great credit for his part in this extraordinary expedition. He was always in advance of the troops, with his Indian guides, and Colonel Burr believes that he did not participate in the sufferings of his soldiers ; for on entering his tent when the troops arrived at Point Levi, he found all the luxuries of tea, coffee, loaf sugar, wine, and other matters of good living, at the table of the commander in chief of the expedition. There can be no more doubt of Arnold's selfishness, and love of self indulgence, than there can be of his bravery.

On one of the rivers which fall into the St. Lawrence, Burr was in a boat with several of his friends, and some soldiers, in a rapid current ; they observed men on the banks of the river making most animated signs to those in their boat, but which they did not understand, and kept on, until at length they had no choice in the matter, for they were precipitated over a fall of more than twenty feet. Their baggage was all lost, one man was drowned, and the others reached the shore with no small difficulty. It was on a cold day. This he met as only an incident in the life of a soldier, who must expect to suffer, and if he escapes with life, must be thankful.

When the troops reached the point of St. Levi, it was necessary to make Montgomery, who, with his

army, was at Montreal, acquainted with the fact ; and Burr was selected as the messenger on this expedition. He knew something of the French language, and his Latin was all fresh from the school. Assuming the garb of a young priest of the Catholic church, he commenced his journey. He knew that the priests of this order had never been reconciled to the treaty of 1763, and were ready to do any thing that would not commit themselves, to aid the colonists in getting possession of the country. He made himself known to the priests by his French and Latin, and was guided by them from one religious house to another, in perfect good faith. He had to conceal himself a few days, from a rumour that a messenger was on his way from Arnold to join Montgomery. The rumour blew over, and he proceeded in safety to Montgomery's camp. For this service he was made an aid to that general, and entered fully into his feelings and his fame. At the suggestions of the young soldier, the general gave him fifty men for extraordinary service. These he formed into a company, and causing them to make ladders that would reach the highest parts of the wall which surrounded the city of Quebec, he exercised them every day in some remote place, to prepare them to scale the walls when required. At length he fixed on his spot, the farthest from the citadel, for a trial of his plan ; but the general had shrewd fears of the success of such an undertaking. On the day of the attack, a feint was made at the very place Burr had fixed on, and it was nearly an hour before the besieged took the alarm at this point ; which proves the wisdom of the plan.

Burr had for several nights perambulated the walls, and knew where to commence his operations, when he should be permitted so to do ; but such a course, on the whole, was too much out of the regular routine of military manœuvres at that day, to be precisely in taste with a commander bred in a regular military school, as Montgomery was. Early in the morning of the last day of the year 1775, the attack on Quebec was made. Two feigned attacks were made on the upper town by Majors Brown and Livingston ; by two other divisions under Montgomery and Arnold. The several divisions moved to the assault in the midst of a heavy fall of snow, which in that region makes an almost impenetrable screen for those at a short distance. The enemy, in the storm, could not see their assailants until they were within a few rods of them. Montgomery, at the head of the New-York troops, advanced along the St. Lawrence by Aunee de Mere, under Cape Diamond. The first barrier on this side to be surmounted was defended by a battery, in which were mounted a few pieces of artillery, and in front of which were a block-house and picket. The troops at the block house made a few random fires, and then threw down their arms in consternation, and fled to the barrier ; and for a time this battery was entirely deserted. Great masses of ice, thrown up by the previous higher elevation of the waters of the river, for a while impeded the progress of the American troops, but who, pressing into a narrow defile, pushed on to the block-house and picket. Montgomery, who was in front, assisted in cutting down or in pulling up the pickets, and advanced most boldly and rapidly, at the head of about two hundred men, to

force the barrier. By this time, one or two soldiers of the enemy had ventured to return to the battery, and seizing a match, discharged one of the guns. The Americans were within forty paces of the piece. Several persons were killed on the spot ; General Montgomery, Captain M'Pherson, his aid, and Captain Cheeseman, a sergeant and private were among them. Major Burr was within six feet of Montgomery when he fell. The major now assumed the command, and called on Colonel Campbell to aid him. This the colonel refused, any further than to make a precipitate retreat with the division. Colonel Burr, always speaks of M'Pherson, who fell by his side, as one of the most accomplished and gallant officers he ever knew. His education was of a high order ; to letters he added science, and had acquired by travel a good knowledge of the world. He had espoused the cause of liberty with enthusiasm, and if he had lived would, undoubtedly, have been an ornament, not only to the army, but to his country also. In the mean time, Colonel Arnold, at the head of his corps, consisting of about 350, made a bold attack on the opposite side of the city. Advancing along the St. Charles, with his natural intrepidity, he was wounded in the leg by a musket ball, and was carried from the field of battle. Morgan, at the head of his Virginia riflemen, now took the command. The barricade was mounted by ladders, when the battery was instantly deserted. The captain of the guard, and his men, were made prisoners. The snow still fell abundantly, and the morning was dark. Morgan formed his men ; but as he knew but little of the map of the city, and was without a guide, he thought it unadvisable to pro-

ceed. While in this situation, he was joined by Lieutenant Colonel Green and Majors Bigelow and Meigs, with the remnants of several companies that had been dragged through the wilderness ; but the whole body did not amount to more than 350 men, but no braver men were ever found on any battle-field. As soon as they could fairly see, they were formed ; but after a fierce engagement, which lasted three hours, in which many on both sides were slain ; their retreat being cut off, they surrendered themselves prisoners of war. And although from Carleton they expected every indignity, they were kindly treated. The sick were attended by the best of physicians and surgeons, and many of those supposed to have been mortally wounded were cured, and returned in safety to their friends. Some of these prisoners were so penetrated with gratitude at such kind treatment, that they called their sons, in after times, Guy Carleton, in honour of his name. The feelings that existed between Montgomery and Carleton previous to the assault on the city, may be understood by Montgomery's letter to Carleton, twenty-five days before the battle. This shows a high degree of excitement on the part of the American commander.

Copy of General Montgomery's last Letter to General Carleton.

“ Holland House, December 6, 1775.

“ SIR,

“ Notwithstanding the personal ill treatment I have received at your hands, notwithstanding the cruelty you have shown to the unhappy prisoners you

have taken, the feelings of humanity induce me to have recourse to this expedient, to save you from the destruction that hangs over your wretched garrison. Give me leave to inform you, that I am well acquainted with your situation: a great extent of works, in their nature incapable of defence, manned with a motley crew of sailors, most of them our friends and citizens, who wish to see us within their walls; a few of the worst troops that call themselves soldiers, the impossibility of relief, and the certain prospect of wanting every necessary of life should your opponents confine their operations to a single blockade, point out the absurdity of resistance. Such is your situation.

“I am at the head of troops accustomed to success, confident of the righteous cause they are engaged in, inured to danger and fatigue, and so highly incensed at your inhumanity, illiberal abuse, and the ungenerous means employed to prejudice them in the minds of the Canadians, that it is with difficulty I restrain them till my batteries are ready, from assaulting your works, which would afford them the fair opportunity of ample vengeance and just retaliation. Firing upon a flag of truce, hitherto unprecedented, even among savages, prevents my following the ordinary mode of conveying my sentiments; however, I will, at any rate, acquit my conscience. Should you persist in an unwarrantable defence, the consequence be upon your own head. Beware of destroying stores of any sort, public or private, as you did at Montreal, or on the river: if you do, by Heaven, there will be no mercy shown.”*

* From Mrs. Warren's History of the American Revolution.

History has been contradictory in regard to the treatment of the body of Montgomery. Mrs. Warren, the historian of the American revolution, has stated, that the body of Montgomery was treated with great indignity, having been thrown on a sledge, without a coffin, and conveyed to a burial place; and adds, that by the persuasion of a lady, who afterwards married the Lieutenant Governor of Quebec, the body was taken up, and again interred in a rough coffin, but without any particular marks of respect, and that the other officers who fell, were indiscriminately thrown, with their clothes on, into the same grave with their soldiers. This account she had from an American officer, from Captain Dearborn, afterwards Major Dearborn, of the continental army, and in later times, secretary at war for the United States, and a major general in the second contest with Great Britain. On the other hand, Dr. Holmes, in his *American Annals*, the very best authority, in most cases, that can be had in our history, says, "that all enmity to Montgomery, on the part of the British, ceased with his life; and respect to his private character prevailed over all other considerations. His body was taken up the next day. An elegant coffin was prepared, and he was afterward decently interred." In conversing upon this topic with the subject of these memoirs, he says, that the first rumour, which Mrs. Warren has stated, was the one that was prevalent among the prisoners, who could not get any thing beyond hearsay, and that of but little credit; and the latter was told by the friends of Carleton, who wished to make as favourable an impression of him as possible. From all he could gather at the time, he believes that

Montgomery was buried with that decency and respect which belonged to the remains of a captain, the highest rank that Carleton could consider Montgomery as ever having held in the British service. His provincial rank of course could not be acknowledged by an officer of his majesty's army.

The failure of the great objects of this expedition was regretted by the nation, and contemplated as a subject of mortification by those of that army who survived the conflict, and not one of them was more chagrined at the bad luck of the enterprise than Major Burr; but the historian of the present day does not so consider it. The daring attempt excited the wonder of nations; and enough was effected to show what such men would be capable of doing when they had learned wisdom by experience. If England had been mortified by the loss of Quebec, wrested from her by a handful of revolutionists, the utmost exertion would have been made to recover it; and having the command of the St. Lawrence, they could have made it difficult for the American army to have sustained itself in Quebec. If they could have held it, a still greater force than did arrive the next year would have taken possession of our sea-board, and committed greater ravages than they did; and if Canada had been closed to the British, our armies would not have had an opportunity of encircling Burgoyne, and fighting a regular force to so much advantage as we did that under him from Canada.

The battles of Lexington and Bunker-hill awakened the martial spirit of the country, and taught the people something of war; but it required such a hazardous campaign as that of Canada, to give our officers

a knowledge of military tactics. The old soldiers had a little too much of systematic warfare for the character of our people, and the situation of our country, and the new ones had not enough. Both acquired much information in the campaign, as disastrous as they considered it.

Montgomery, a gallant and regular officer, had fallen. He had been regarded as one of the most promising of the generals in the American service ; but the blood of the brave is necessary at times to rouse a country's feelings, and to infuse a martial ardour throughout an army. The shades of Warren and Montgomery were invoked by every recruiting officer in the spring of 1776. The pulpits teemed with their virtues, and even holy men compared the martyrs of freedom to the martyrs of the church. In the halls of congress their names were mentioned with profound reverence. Monuments were ordered to be erected to their memories, and the best scholars of that body were set about writing epitaphs for those heroes, to transmit their names and virtues, as examples truly worthy of imitation. Every man understands a sacrifice, but few the force of a principle. The blood of those who fell on the 5th of March, 1770, in the streets of Boston, had more influence in ripening the fruits of patriotism than all the previous acts of political oppression. The acts, as long as they were on paper, were not understood by all ; nor directly felt by all : but a bleeding corse and funeral obsequies are subjects of eye and ear, and of feeling to all ; they are painted in the imagination, and long keep possession of the heart. Lucius Junius Brutus did not make more of the blood of Lucretia, than Warren and other

orators of the revolution did with the deaths of Maverick, Gray, Caldwell and Atucks, and the wounds of Monk. The most impassioned changes were ringing upon those events until the cause of freedom was safe.

The forces under the command of Arnold were all volunteers, and of course it might be expected that they were brave men. They were fully aware of the difficulties of penetrating the wilderness at such a distance, but this did not appal them. It was too late in the year when they commenced their march. At that time, however, the Indian summer, a pleasant season of our climate, made the first part of the way cheerful; but soon the autumnal rains began to fall, and the exposure to them was fatal to many of the officers and soldiers, and others who recovered suffered much.

In this little army there were many who afterward earned a glorious reputation. History, we trust, will do justice to all of them. A few of them are fresh in our recollection. Major Return Jonathan Meigs, a name that bears no affinity with the names of the heroes of the classical ages, but which a reputation per se, was living in Connecticut when the revolutionary war broke out, and on hearing of the battle of Lexington, marched with his company to head quarters.

When this expedition was fixed upon, he, with the rank of major, engaged in it. He was an enterprising man, intelligent and cautious as brave and persevering, and every way fitted for the occasion. In this adventure he gained imperishable laurels, which were not tarnished by any after conduct. When exchanged, he was made a Colonel, and engaged heart and

mind in the warfare. He conducted an expedition to Long Island, in 1777, which redounded to his honour as a man of bravery and intelligence. In 1779, under Wayne, he was distinguished at Stony Point, and for these actions received the notice of congress. In the whole conflict he was considered as a man of the highest character and prowess, and at the close of it received the acknowledgment of Washington, that he deserved his country's rewards and honours. When the storm of war was passed, he was not satisfied with living in the old and thickly settled part of the country in which he was born, but emigrated to the West, then a new world. There he became a lawgiver in the forest, fixing his own regulations for emigrants on the trees at the crossing paths in the forest, which were obeyed with more than the ordinary regard paid to the most solemnly enacted laws. His was a code of the most equitable kind, without discrimination of parties or classes. The spirit of the pioneer, the honour of the soldier, and the sagacity of the statesman were discovered in them. There was no party in his creed, nor in his code of laws. All were tinged with the wildness of primitive man, and the feelings of well-intentioned patriots. Such men have an influence in forming society that can hardly be realized by those who live in the cities and towns in a dense population. Colonel Meigs published his journal, kept in the Canada campaign, from which much that is to be found in the general history of that march through the wilderness was taken. He lived to a good old age; and many travellers in the West often went miles out of their way to collect anecdotes of the revolutionary war and of Indian fights.

Colonel Timothy Bigelow, of Massachusetts, was a captain in this expedition. He was a zealous, intelligent, brave officer, and a patriot of the purest cast. He risked life and property in the cause of his country. His son was a distinguished statesman, many years speaker of the House of Representatives in the Legislature of Massachusetts, and his grandchildren are conspicuous members of society.

Colonel Green, of Rhode Island, was in the expedition, and was second in command. The officers and soldiers of that state were among the best that Washington ever had under his command.

Major General Dearborn, of the war of 1812, was a captain with Arnold. His men suffered more than any of the others by the want of provisions, having lost a part of their share after the scanty relics were divided. Dearborn was taken ill of a fever, and left in a log hut for many days, his men not expecting that he would ever be restored to them ; but his sound constitution prevailed over the disease, and he joined the forces before the attack on the city.

General Morgan, afterwards the hero of the battle of the Cowpens, was in that expedition also. He was accustomed to the woods, and had a strong constitution, in a giant frame.

The Rhode Island troops were distinguished in this enterprise. We take an account of Major, afterwards Colonel Ward, who was in this enterprise, from Dr. Francis' life of Colonel Ward, to be found in Knapp's American Biography. The doctor has sketched the incidents in the life of his subject with truth and graphic elegance.

Colonel Samuel Ward, son of Governor Samuel

Ward, was born at East Greenwich, Rhode Island, on the 17th of November, 1756. He was the second of five sons. After the usual preliminary studies, most of which he prosecuted under the care of his accomplished and excellent father, he was admitted a student of Rhode Island College, now called Brown University, then under the presidency of Dr. Manning, and received the honours of the institution before he had arrived at his fifteenth year; and thus, at a period of life when most young men are but commencing the business of existence, we find young Ward ready to embark in the perilous contest then about to ensue. Born at a period which seems to have been particularly assigned for the discussion of civil and political rights, he was early imbued with the principles of republicanism. "*These Colonies are destined to an early independence, and you will live to see my words verified,*" was the recorded declaration of his father, Governor Samuel Ward, as early as the year 1766; a prophecy which was fulfilled ten years after by the *Declaration*. With such pupilage, and such principles, the lessons of freedom could not be lost on an obedient and deserving son. Accordingly, Col. Ward was enrolled in the volunteer company instituted for the purposes of military instruction in Rhode Island, and denominated the "*Kentish Guards*," in 1774. It was to this company that the American army owed some of its brightest ornaments:—*Flagg, Thayer, Olney*, and the two *Greenes*;

"Scipiados —————
 ————— duo fulmina belli."

On the breaking out of the war, Colonel Ward was

appointed a captain in the Rhode Island army of observation, at the early age of eighteen years, and in that capacity joined the camp at Cambridge; nor was it long before an opportunity offered to test the mettle and the fortitude of the most daring and enterprising spirits there assembled. In September, 1775, General Arnold was invested with the command of eleven hundred volunteers, destined to penetrate to Quebec, through an unexplored wilderness, and by the route of the Kennebeck river. Captain Ward shared the honours and the perils of that magnanimous enterprise. The annals of the revolution furnish nothing more heroic than this early essay of American courage. Honourably as it has been commended in history, its difficulties, dangers, and privations can never be sufficiently appreciated. We read of the passage of the Alps, in ancient and modern story, with a just sentiment of admiration: yet, is it not certain, that the privations if not the difficulties of those enterprises were far surpassed in the expedition of Arnold? Their batteaux (we are told) had to be dragged by the soldiers over water-falls, portages and rapid streams; and such part of the march as was not aided by rivers, was performed, for a distance of more than 300 miles, through thick woods, over lofty mountains and deep morasses. A part of the detachment actually abandoned the undertaking, and returned to Cambridge to avoid starvation. Captain Ward was one of those who persevered, and who (after subsisting upon dogs and reptiles, and devouring their very cartridge boxes and shoes to appease the torments of hunger) arrived before Quebec in the month of December, 1775. He was present at the attack of the city by escalade;

when, sharing in the misfortunes, as he had in the privations and the honours of the expedition, he was made prisoner, with the principal part of the detachment. In 1776 he was exchanged as a prisoner, and in 1777 was commissioned as a major in Colonel Christopher Greene's regiment of the Rhode Island line of the continental army, and in that capacity was present, that year, and co-operated in the defence of the fort at the Red-bank, upon the Delaware, when it was attempted to be stormed by the Hessians, under Count Donop, on the 22d of October. In 1778, Colonel Ward had the honour to participate in the military operations of Generals Greene, Lafayette and Sullivan, in his native state. In the celebrated retreat from Rhode Island, he commanded a regiment, although he was not commissioned as Lieutenant Colonel until the next year. From 1779 to 1781 he shared in the operations of General Washington's army in the Jerseys, and (if we are not misinformed) was present at the defence of the bridge at Springfield, by a part of the Rhode Island line, against the Hessian General Knyp-hausen, in June, 1780.

At the termination of the war he participated in the glorious self-denial manifested by the officers of the patriot army, and returned to the peaceful occupations of a citizen, with the same ease as he had made arms his profession seven years before. Then was witnessed a spectacle far more magnanimous and imposing than the achievements of Bennington, Yorktown, or Saratoga: Washington to his farm; Knox to his merchandise; Hamilton to the peaceful study of the municipal law: unpensioned, unrewarded, saving by the honour and applause of their countrymen!

The subject of these remarks now began the world as a citizen, in the business of a merchant ; and, as enterprise had previously marked his character, so it continued to display itself in his subsequent life. Colonel Ward was an adventurer in the first vessel that bore the new republican flag to the China seas. He made a voyage from Providence to Canton in the spring of 1783. Upon his return to his native country, he established himself as a merchant in the city of New-York, where his probity, frugality, and attention to business, soon gave success to his enterprise. He was not, however, exempt from the vicissitudes of fortune, incident to commerce ; and a season of disaster forced him to make a voyage to Europe, for the purpose of accommodating his affairs. And in the subsequent adjustment of his business, he evinced throughout, the strictest integrity and honour ; no one ever having cause to regret the sacrifice of a farthing of loss. Nor was his observing eye unemployed in the contemplation of human society as there exhibited. In after life, his conversation, at all times interesting, was rendered peculiarly attractive to all who enjoyed an intimacy with him, by the discrimination with which he commented upon what he had seen and met with abroad. The politics and the military operations of the revolution shared also among the topics that were most agreeable to his mind ; but rarely, if ever, did he allude to the actions in which himself had borne a part. That modesty, which was so particularly striking in the military men of the revolution, made an essential part of his character : this virtue of Washington was too deeply impressed upon the character of those who stood around him, for ever to be effaced : “ *nemo delere*

*possit, aut divellere, qui totam statuum non immi-
nuerit."*

On his return from Europe, Colonel Ward established himself on a farm at East Greenwich, where he lived to see his children educated to usefulness around him; and as several of these had embarked in business at New-York, he was induced, about sixteen years since, (in order to be nearer to them,) to remove to the neighbourhood of that city. Accordingly, he disposed of his farm at East Greenwich, and purchased one at Jamaica, Long Island. There he lived in the midst of his family and friends, in the full enjoyment of peace, of filial love, and of honour. In early life, he had married a daughter of William Greene, Esq., Governor of Rhode Island, thereby connecting himself by a double relationship with the eminent soldiers of that name. This excellent woman he survived but a short time. Upon her death he began to feel the necessity of an entire abstraction from business and the cares of life, and accordingly removed to the city of New-York. Here, surrounded by his children, he continued a patriarch amongst them, whose look was wisdom and whose word was law. Blessed with a vigorous constitution, it was to have been hoped that death would have delayed his summons, even at his advanced age. But "in the midst of life we are in death!"—the insatiate archer came, but found not his victim unprepared. A philosopher from principle, and a moralist from habit as well as reflection, "*constans et libers fatum exceperit*," and joined his glorious compeers beyond the grave!

It has sometimes been the subject of regret, that one who, like Colonel Ward, so well practically knew the

story of our revolutionary struggle, did not commit to an enduring record the interesting facts which he possessed. Colonel W. was averse to writing; and it was only in the circle of his most intimate friends, that he ever alluded to the times that tried men's souls. His mind was of a superior order, richly stored with historical details. His classical attainments, which he cultivated through his whole life with increased gratification and delight, and his strict regard for truth, would have enabled him to furnish a memorial of singular advantage to the future historians of his country. Colonel Ward died at his residence in the city of New-York, on the 16th of August, 1832. He was rarely subjected to the trials of severe sickness. He continued in active exercise until some few days previous to his fatal illness, when he was seized with an acute bilious attack. He soon foresaw the issue, and after a short illness, surrounded by his sympathizing family, closed a life of usefulness and honour, in the 76th year of his age. He had survived for many years as the oldest graduate of his college. His remains were followed to their place of interment, in St. Thomas' Church, by his friends and the surviving members of the venerable society of the Cincinnati, who bore public testimony to his worth as a man, and his services as a soldier.

Boston was evacuated on the 17th of March, 1776; but previous to that period General Washington had sent a force under General Lee to put the city of New-York and Long Island into a state of defence. Washington followed soon after the evacuation of Boston, and fixed his head quarters at New-York. The British land and sea forces were not in readiness

to act until late in the summer. On the 2d day of August, 1776, they made their first attempt on Long Island. Their forces amounted to 24,000; the American troops to about 15,000, suddenly raised and wretchedly disciplined. General Green was with them; but two days before the battle of Long Island, he left the camp, from ill health, and General Putnam took his place. Major Burr was at that time the aid of General Putnam. As soon as Putnam was ordered to his command, his aid, Major Burr, at once inspected the troops under him, and reported that they were destitute of discipline, badly armed, and, in his opinion, so unfit for battle, that it would be madness to risk one; and the battle of the 27th of the same month proved him to be a true prophet; or perhaps it required only a little military sagacity to foretell the event of a fight between veteran soldiers and such unprepared forces. The whole campaign, with a few splendid exceptions, was one of military blunders and bloody disasters. The retreat of our troops from Long Island, where they never should have been, was a fortunate, well-conducted affair, and reflected honour on the commander in chief. The darkness of night, increased by a fog, offered a propitious moment, which was happily seized by a beaten army to escape from their pursuers. Sullivan evinced courage and skill, but it was all unavailing. Some of the corps made most brilliant displays of prowess. Colonel Smallwood, with about 400 of his regiment, made several charges, to dislodge Cornwallis from a very strong position; but being attacked on the rear by General Grant, he was at length obliged to surrender.

He might have said with Francis I., as it regarded

his own men, after the battle of Pavia, "we have lost every thing but our honour."

Soon after the success of the British on Long Island, they made preparations for attacking the city of New-York ; and when it became a question how far it was practicable to defend the city with such troops as the American army consisted of, against veteran soldiers, aided by a powerful fleet, Major Burr was one of those who thought it next to madness to attempt it. He was opposed to what was called the middle course, which was at first agreed on. Five thousand men were in the city, nine thousand were to be stationed at Harlaem, and the residue of the army was to occupy the space between these forces. Major Burr spoke his mind freely on this subject ; a second council of war came to his opinion, and a retreat was agreed upon ; but not until the British troops had commenced an attack on them. The retreat was one of confusion, and without military skill in general. A force under General Knox had possession of a small fort on an eminence in the city, called Bunker Hill. The hill has since been levelled to the adjoining surface. It was situated near where Grand-street now is. Those of middle age at this day remember it ; but the origin of the name I have not been able to trace. Knox was determined at first to defend himself in this fort, forgetting how weak it was, having neither a supply of water, nor a bomb-proof magazine. Major Burr, being sent back at his own request, by General Putnam, to pick up those who knew not what to do, rode up to this fort, and warned the troops of their danger. They were unwilling to retreat, as General Knox thought he could defend himself. Ma-

Major Burr, who had established his reputation both for courage and military skill, insisted, that the fort could not stand an attack of ten minutes, if a few pieces of artillery were brought to bear upon it; and offering to conduct their retreat himself, the men followed him after a few minutes' consultation. He knew the ground, and the best methods to avoid the enemy. They met with some resistance, but fought their way to the main army with only a small loss. Many of the men who were in that party have often said, that they should have been prisoners in one hour if Major Burr had not appeared and assumed the direction from General Putnam.

The next day after the retreat from the city, a considerable body of the enemy appearing on the plains between the two camps, Washington ordered Colonel Knowlton, with his well-disciplined Connecticut regiment, and Major Leitch, with three companies of Virginia riflemen, to get into the rear of the enemy, while a disposition was shown to attack them in front. This stratagem succeeded, and a battle followed. Knowlton fought with great spirit and bravery a much larger number than he had in command. In this noble strife Knowlton fell, and Leitch was mortally wounded. Knowlton had been a captain, with a large company of fine fellows, in the battle of Bunker Hill, on the 17th of June the year before, and was most singularly distinguished in that memorable fight. His company was on the extreme left, near Mystic river, and after the Americans had retreated from the right, in the redoubt and breast-work, towards Charlestown Neck, he covered the retreat by a skilful movement on the British force, who, in the eagerness of the pursuit, were in great dis-

order, and who were successfully checked by about a hundred men. Such is the power of discipline with bravery. The fall of Knowlton was noticed by Washington, in his next day's order to the army, with no common eulogy. Major Burr witnessed his last noble effort for his country, and from an intimate acquaintance with him as an officer, has often been heard to say, that Knowlton was born a general. Major Leitch was almost idolized by his rifle corps, but no historian has as yet done him justice.

Major Burr advocated an abandonment of Fort Washington, and this opinion was supported by General Lee; but without avail. Nearly three thousand troops were left to defend the fort; but on the 16th day of November, 1776, it was taken by the British. It was bravely defended, and those who fell were more fortunate than those who survived. Between two and three thousand persons were thrown into sugar houses, used as prisons, into jails and prison ships, and not treated as prisoners of war, but as rebels of the most infamous character. The recital of these cruelties, after fifty-seven years, never fails to fill the soul with indignation and rage. The Jersey prison ship is a word at this hour of terrible import, second only to the black hole in Calcutta. Those who survived, after suffering many months with small pox, hunger, scurvy, and almost every loathsome disease in the catalogue of the ills of the human race, were sent home to strike terror into the minds of the people; but the English misunderstood the genius of the nation they were sent to subdue. Resentment, that knew not bounds, filled the bosoms of all sorts of men, at beholding their fathers, brothers, and friends such objects of

pity and disgust. At this sight they mentally swore to avenge the wrongs of their kindred:—and they did. The very last year, the writer met in Wall-street an eastern gentleman, Captain Sewell Tappan, of Newburyport, in the state of Massachusetts. He was for many months, when a boy, confined in the Jersey prison ship, and had that day been to visit the place where she had been moored on the Long Island shore. The spot he pointed out to me. I proceeded to make some inquiries of him, but his emotions were too strong for utterance. The tear stood in his eye, and his whole frame shook as at some recent calamity. This veteran was a man of principle, of firmness, and intelligence, who had seen and suffered much in his day, but this scene seemed to fill his whole soul, although more than half a century had elapsed since his sufferings had ended.

The military disasters of this campaign set most of the officers to thinking that an army was good for nothing without discipline, and the events of the battles of Trenton and Princeton proved that the lessons taught by misfortune and disaster had had their salutary effects.

Major Burr had now, although a beardless youth, become known to all the officers of the army, and his praises were on every tongue. They saw that in him were united great intelligence and penetration, and a high moral and physical courage, with a lofty sense of duty, and a readiness to meet every danger. He knew the means necessary to the ends in every military movement, and had the courage to retreat as well as to attack, when prudence dictated. It is a singular fact, that there never was the slightest difference of

opinion among all his fellow officers, upon this point, from that day to this.

When the call for new levies of troops was made in the spring of 1777, several regiments were raised by each state, and men of influence and standing in the political world were appointed as colonels, if they had no great reputation for military affairs, while a lieutenant colonel was sought for who had military skill and courage. One of these regiments was under the command of Colonel Malcolm, a merchant of the city of New-York. He was a highly respectable gentleman, of middle age, of Scotch descent, and of no ordinary influence in the state. Major Burr was appointed his lieutenant colonel. When Malcolm saw his beardless lieutenant colonel, he thought the boy would be continually getting him into some difficulties, for it was quite impossible for him to conceive that prudence and wisdom could be found in one so young; but in a few weeks, Malcolm said to him, "I will be the father of the regiment; you shall have the honour of fighting it."

In September, 1777, while Colonel Burr, with his regiment, was lying at Suffern's Cove, an alarm was given that the enemy was in great force at Hackensack, and were plundering the farms of their cattle, horses, and provisions. As soon as the information reached him, he took a chosen band of his brave soldiers, and set out at once on his march to meet the enemy. On his way, he found several bodies of militia in great consternation, without a leader, rather doing mischief than preventing it. He took command of the whole of them, and set them on several duties, to keep them in readiness if their services should be required.

From noon to about 10 o'clock at night he had reached the neighbourhood of the enemy. Leaving his men in a wood, comfortably prepared to take the refreshment and rest they required, he reconnoitred the enemy's camp, and ascertained the precise ground of the picket guard. At daybreak he returned to the woods, awakened his men, and moved on silently, having given the strictest orders to them not to speak, nor to fire a gun, on pain of death. In this way they fell upon the picket guard, with their bayonets, and killed or made prisoners of every one of them. Messengers were instantly despatched for the militia, who gathered so rapidly after this exploit, and in such numbers, that the enemy retreated across the Hudson as soon as possible, leaving behind them all the cattle they had taken, with the other plunder. The militia had full faith in being able to have conquered the enemy, though two thousand strong, if they had not so precipitately retired. The citizens were ready to fight under Colonel Burr with the greatest alacrity. This spirited conduct not only had the good effect of ridding the Jerseys of the enemy, but of preventing him from making another predatory excursion. After this, Colonel Burr was ordered to join the army in Pennsylvania with Malcolm's regiment.

Malcolm's regiment was made up of soldiers from different states, from New-York, Pennsylvania, Massachusetts, and other states in New-England. Colonel Burr found in some companies a full compliment of officers with only a few men. Some of these officers, after having obtained their commissions, had been shamefully remiss in collecting their men, or of keeping them recruited. Colonel Burr wrote to General Con-

way, a thorough bred soldier, for permission to expurgate his regiment of these drones. The general promptly gave his consent, in writing, that the colonel might dismiss such as he chose of this Falstaff force. In a single day, eleven of these officers were ordered to leave the camp forthwith, with this simple observation, that if any one felt aggrieved, that when the campaign had closed, he should be at a particular place, naming it. Ten out of the eleven took this in silence, but one, a young, pampered boy, the spoilt child of wealthy parents, wrote him an insolent letter. The reply to this was simply, I shall be at the public house in your village, (naming the hour and the day,) when I shall be pleased to see you. At the precise hour the colonel was on the spot, but the brave captain did not make his appearance. Towards the close of the day, Colonel Burr took the liberty to repair to the house of the captain's father. He had long been acquainted with the family. The captain was at home, surrounded by a party of ladies at tea, who received the colonel with all respect and courtesy due his rank and character. He entered into conversation with the ladies, old and young, and spent a social hour, as one only on a visit of pleasure. As the colonel took leave of the party, he requested the captain to accompany him to the next neighbour's, as he must visit an old friend before he left the place. The captain, with some agitation, consented. This was only to give him an opportunity of stating his grievances, and of naming the satisfaction he required. The two officers had gone but a short way, when the whole bevy of ladies came running after them, with shrieks and screams, imploring Colonel Burr not to kill Neddy, the pet appellation of

the captain; for some one who knew the contents of the letter had named his suspicions to the ladies, and this had produced the scene. The ladies, young and old, implored him, with tears in their eyes, that the business should go no farther. Neddy was, in his own opinion, thus happily relieved from all chances of harm, for the colonel, smiling, politely handed over the boy to his mother and female friends, with this advice: when you feel in a brave and swelling mood, despatch no letters to gentlemen, unless these friends have inspected them. The ladies becoming surety for Neddy's good manners in future, the colonel took his departure. I name this anecdote principally to show how much difficulty the higher classes of officers in the American army had to contend with: the ignorance of some, and the imbecility and pride of others. It was difficult to make some believe that those who were fighting for liberty should not be at liberty to fight when they pleased. The bold and patriotic in the army had not only to do their own part of every duty, but watch over those who would not or did not dare do their own. One coward is often the death of many brave men, and one traitor may sully the reputation of a host of true patriots. It was at once a source of mortification to the truly spirited and zealous officers, who wished for a share of their country's glory, to mark all the errors and acts of ignorance they were obliged to witness every day, and what, if possible, was still worse, to be constantly misrepresented by the minions that swarmed at head-quarters.

While the American army lay at Valley Forge, a detachment was sent to some distant mills to watch the movements of the enemy. The corps was

not remarkable for discipline. Almost every night the alarm was given that the enemy was on his march, which, on investigation, turned out to be false. Vexed at this, Washington ordered Colonel Burr to the command of this detachment. On his arrival among them, he commenced drilling them at once, and kept them constantly engaged. This was too much for those who had lived idly, and been suffered to murmur at all times. Some of the most restless were determined to rid themselves of such a severe disciplinarian, and formed a plan to destroy him. This came to his knowledge. On a cold, bright, moonlight night, he issued an order for parading the troops. As he was exercising them in line, a daring fellow stepped out of the ranks, and called to his comrades that the moment of freedom had arrived. The colonel was near him, and had his eye upon him, and with decision and celerity, for which he was distinguished, he struck the fellow's arm with his sabre, and it hung dangling by a small strip of skin to his shoulder; and without taking any farther notice of the affair, put his troops in motion. The example was as salutary as decisive; not a murmur was heard from any one of them afterwards. Colonel Burr was on this duty for several weeks, and during the whole time no alarm was given to the main army, for he examined every thing himself; but the next night after he was relieved, Washington was again disturbed as before. Some of the finest officers of the American army wintered at Valley Forge. Washington, M'Dougal, De Kalb, Brooks, Whigglesworth, and a host of others; and although the cold was severe, and provisions not very abundant, still the society was excellent, and all indulged in the hopes of

soon seeing the close of the war ; but they had much to do to achieve the independence of the country after that. The writer of this memoir has often heard Brooks and Whigglesworth speak of Colonel Burr as an officer, and rank him among those born for great commanders. These officers were the pride of the American army themselves, and their opinions are high authority. Whigglesworth was the son of a professor of mathematics at Harvard University, and was graduated when quite a youth. He entered a counting room to make himself a merchant. From the counting room he visited Europe as a factor, at first ; and after a few voyages he took command of a ship, and was considered as an excellent sailor and navigator. On the breaking out of the revolutionary war he was offered a colonelcy, which he accepted, and was third in command when Arnold met Sir Guy Carleton on Lake Champlain. The nautical science so generally attributed to Arnold belonged to Colonel Whigglesworth. He was an excellent scholar in every branch of knowledge among us, and decidedly possessed the best historical information of any man of his time in this country. For his military services, Washington, after the adoption of the federal constitution, appointed Whigglesworth collector of the port of Newburyport, in the commonwealth of Massachusetts. This veteran was buried in that town about seven years since, when the regiment gave him a splendid military funeral.

Lieutenant Colonel Brooks, whose reminiscences of the war were accurate and minute, whom I have mentioned as having borne testimony to the military character of Colonel Burr, was truly a hero of the revolu-

tion. He was in the battle of Lexington, on the 19th of April, 1775; passed several times from General Ward, at Cambridge, to Bunker Hill, on the 17th of June following, and would have taken part in the fight if Ward had not required his services as his aid on that day, expecting, as he reasonably might, an attack on his camp. Washington, on his arrival, soon saw that Brooks was by nature a soldier. He sent him to superintend the works on Dorchester height, and expressed his great satisfaction in his skill and military exactness; but his talents were more conspicuously displayed in the retreat from Long Island in August, 1776, and in his bravery, discipline, and prowess, in covering the retreat of the army at White Plains. He was with his regiment at the taking of Burgoyne; and, in fact, in almost every battle until the close of the war, when he assisted in putting down a spirit of unlawful excitement at Newburgh, just as Washington was about to take leave of the army. When the quasi war with France, in 1798, called forth an army, and Washington was appointed lieutenant general, Brooks had the offer of the appointment of brigadier general in this army; but he did not believe that the forces raised would ever take the field, and declined the appointment. He was for many years major general of the Middlesex division in Massachusetts, and was considered the most accomplished officer of the state. After the close of the last war, (during that period he was adjutant general of the militia of Massachusetts,) he was chosen governor and commander in chief of that commonwealth, and held the office until his health was so much impaired that he declined a re-election. He died in the spring of 1825, much re-

gretted by all classes in the community. The medical society appointed one of their number, Dr. John Dixwell, to pronounce his eulogy on their departed brother, which was done to public acceptance. Such were the men who bore testimony to the high military talents of their brother in arms, Colonel Burr. These men never, for a moment, were of the same political party with Colonel Burr, after the constitution was adopted; but they were above any prejudices, and spoke of him as they knew him, a splendid soldier, with fresh laurels on his brow, shining with the dews of valour and patriotism. The days of trial and of reciprocal confidence are those when honest opinions are formed and expressed.

At the battle of Monmouth, Colonel Burr had the command of his regiment, Malcolm being absent. At his own request, he had marched to attack the enemy, who, in considerable force, had taken an advantageous position, from which Colonel Burr thought it advisable to dislodge them. As he was advancing with great spirit to attack, he received an order from the commander in chief to halt where he then was. Although he saw the evils of this order, as a good disciplinarian he obeyed, and in this situation was exposed to the enemy's artillery, which destroyed a third part of his regiment, while they were not able to fire a musket with effect. His own horse was shot under him by a cannon ball, which struck the animal just behind the girth of the saddle, at the precise moment when his rider had stretched his legs forward to give himself a more easy position. After this slaughter, he was allowed to take his part in the battle. The fatigue he felt on this day had a very sad effect upon

his health, which with all his prudence in living, was not for years overcome. This loss of brave men, by such an order, sunk deep into his mind, and has had an influence on his opinion of Washington as a military man ever since. It was on the 28th of June that this battle was fought, an intensely hot day. There had been a difference of opinion between General Lee and General Washington on the early part of the day. This was greatly regretted by the army, for they had the utmost confidence in Lee's military talents; and the moral influence of Washington was unbounded. The fight ceased only with the light of the day. After all the fatigues of heat and suffering from the action, the American army slept on the ground where they had fought, with arms in their hands: but when the day dawned upon them, the enemy had fled. Well might they who wanted to give battle claim the victory. The discretion and obedient fearlessness of the youthful leader of Malcolm's regiment was a theme of praise for the whole army. General Poor, who was ordered, in every battle, with the New-Hampshire troops, to begin the fight with his brigade, spoke of Colonel Burr as a first rate officer. He had no rival, for he was the youngest man who had ever commanded a regiment in our country. It was well known that there was much hard fighting still to be done, but every one felt that the *back bone* of the war, to use the phrase then common, was broken.

The French had now taken part with us, and Count D'Estaing had arrived at the capes of Virginia to join us in the revolutionary struggle. A new face was put on all things; but this did the country no good at that time, except to bring some of the precious metals to

us, of which the country was much in want. They played either a cautious or a rash game ; and at first seemed to have but a slight regard for American soldiers. But notwithstanding this, the very circumstance that they had appeared on our coast in hostile attitude against our enemy, and as allies to us, gave a new impulse to every thing ; or, rather, fresh hopes to all parts of the country. Colonel Burr, having some knowledge of the French language, was soon acquainted with these chivalrous soldiers of the politest nation in the world, to whom a sword was as familiar at that time as a glove or a cane, who had not lost the gallantry of the days of Louis XIV. These thoroughbred warriors saw and admired his talents, and courted his company.

There were many men of talents in the battle of Monmouth. Charles Lee was a soldier, the son of a soldier. He had entered into the British army when young ; but while in his uniform he was ardent in the pursuit of classical knowledge, and became acquainted with modern languages in addition to the classics. He had travelled through Europe, and visited Italy, and Germany, and Prussia, and was introduced to Frederick the Great of Prussia. He came to America with Abercrombie, and was with him in his disastrous attack on Ticonderoga, which was defended by Montcalm, in July, 1758, and two thousand British troops, including provincials, were killed, with Lord Howe, the favourite of the army. Lee was intimate with his lordship, being about the same age, and fond of the same noble pursuits, letters and war. He served until Canada was taken, in 1759, and then returned to England, when he was made a colonel, and served

in Portugal with reputation. He was a whig in his own country, and took a decided part in politics, opposing the measures of the British government in relation to the American colonies. He did not come to this country, to make it a place of residence, until 1773. On his arrival, he avowed his sentiments on all occasions, and urged the people to resistance. He purchased lands in Virginia, and commenced agriculturist. On the commencement of hostilities, he was appointed a major general in the American army, and repaired to the camp at Cambridge. He was, at that period, unquestionably, the most able soldier in the army, having seen more service. Washington had the highest confidence in him, and in the spring of 1776 sent him to New-York to put the city and neighbourhood in a state of defence. He intimidated the tories by the boldness of his measures, and inspired the sons of liberty with confidence. After the disastrous campaign of that autumn, he was sent southward; but in October he was ordered to repair to the northern army, but was taken prisoner on his way. He remained a prisoner until the spring of 1778, when he was exchanged for General Prescott. In this battle of Monmouth, he was ordered to attack the rear of the enemy, but finding the British force larger than it had been supposed, he thought it prudent to retreat from the ground he had taken, which was marshy, and make a stand in a more favourable position. While doing this, he was met by the commander in chief, who expostulated with him on this course of proceeding. This was resented by Lee in no measured language. Washington issued his orders, which were obeyed by Lee, and he fought with his

usual gallantry and skill. The fate of the battle has been described. In all probability this affair would have been passed over by Washington, had not Lee followed it up by an indecorous letter. For both offences he was arrested, tried and found guilty, and suspended from command for a year. This was too much for his mighty spirit. He retired to his farm, buried in seclusion for four years, when he sold his estates, and came to Philadelphia to reside, not probably to enjoy society, but to find in the wilderness of men food for his spleen; but he was not permitted even this substitute for happiness, for he was seized with a fever, of which he died in a few days after his arrival. He played the soldier even to the death, for his last word was an appeal to his grenadiers. Lee was at one time supposed to have been the author of the letters of Junius; but any one acquainted with his temper might have supposed him to have ill nature sufficient for such compositions, but not such a control of his temper as would permit him to use the weapons of controversy with such cool adroitness as Junius. It must, however, be confessed, that he wrote with Junian eloquence, but not with the polish or point of that great satirist. In his person, Lee was tall, quick in his movements, skilful with his sword, at home in every movement on the battle field, and brave at all times. His military talents were of great service to our country, and all the idiosyncracies of his character did harm only to himself.

General Poor was in the battle with his brigade. He was a fine specimen of a puritan commander. He was bred a tanner, early discovered great firmness and sagacity, had the confidence of his fellow-citizens

of New-Hampshire, and that confidence was proved to have been well founded. At Saratoga and at Monmouth he was first in the field, and among the last to leave it. He died before the close of the war.

In the autumn of 1778, Colonel Burr was attached to that part of the northern army under General M'Dougal, but was not with the main body. His reputation as a soldier was now so well established, that he was put on every highly responsible command. Colonel Malcolm hardly ever even visited his regiment, for he saw that Colonel Burr was every inch a soldier. At one time, the commanders of three regiments of Silliman's brigade had leave of absence, and Colonel Burr had the sole command of it. Every soldier slept quietly, or marched cheerfully, for he knew that he was to be led out to battle by one who knew what to do, and willing to discharge his duty. There is no confidence so great, and that goes so far, as that which a soldier reposes in a well bred commander. It reaches to martyrdom, and all in the ordinary course of duty. Colonel Burr was not allowed any still, ordinary life. The British had formed their lines in Westchester county, not so far from the city as to be long without succour from the main army, if attacked, in considerable force. The Americans were, of course, on the watch for them at no great distance. On the lines of both armies, and between them, there were many tories, many whigs, and many of doubtful character. It was treacherous ground. Difficulties took place every day, and confusion succeeded confusion, when General M'Dougal appointed Colonel Burr to this important post. He took his quarters in Westchester with from four to six hundred men only. He

first surveyed the whole ground, made a register of all the householders within it, the number of their families, and noted their characters, of whig or tory, stated their ability, in his opinion, to assist or annoy him. He visited every house of any importance, promised them freedom from plunder or insult, and complete protection, if they observed a strict obedience to his orders. A day or two after his taking the command, but before his discipline could have been enforced, some depredations were made upon some of those suspected of being friendly to the enemy. The plunder was restored, and the aggressors punished. This had a good effect, for when the tories found themselves protected in person and property, they were quiet. The several companies of his regiment were stationed, from the nature of the service, at points designated by their commander, as he thought most proper for the discharge of his duty, at a considerable distance from each other. He kept up the strictest discipline. Every night, at some hour uncertain to those visited, he made his rounds of inspection, and marked the slightest neglect of discipline. To perform this duty, he sometimes rode more than twenty miles. He employed guides, who acted also as guards, and they flew from one place to another so rapidly, that it was in vain for the enemy to look after them. All the machinery was so admirably managed that even his most confidential officer never knew what was next to be done, when one thing was accomplished. Such was the confidence that his little army inspired in the whole county, that he found no difficulty in raising whatever supplies he wanted; but he never took a load of hay or a bushel of barley without paying for

the same, although, by the laws of war, as they were then understood, he had a right to levy contributions on those unfriendly to the American cause, whenever he thought proper, or occasion required it. Colonel Burr respected the property of enemies as well as that of friends, and when General M'Dougal intimated that he had an unquestionable right to seize the property of the tories, at such times, and in such measures as he might deem expedient, Colonel Burr informed him, in the pride of his soul, that if any such step was taken he must decline the command. He had pledged himself to every one that all property of those who remained quiet should be safe, and that pledge should be sacred while his command should continue. Nothing more was said, for his opinion in matters of national law was as much respected as his decisions on military matters. Colonel Burr was not only feared but loved by his men. If one was sick, he visited him, and prescribed the proper medicine for his recovery; and after a short time, the sick would not take any medicine from any other hands. He lived abstemiously, and shared every hardship with his men, in fact, was more severe to himself than to any one else. He usually slept booted and spurred, with his surtout on, fit for action in any emergency.

In the summer of 1779, a large force under General Sullivan marched to our frontiers to chastise those of the Six Nations who had broken their pledge of neutrality. Colonel Burr was not in sufficient health to join this expedition, as he knew that under such a general that there would be energy and decision. This summer he spent some time in Connecticut, and

took command of the militia that were suddenly raised to arrest the progress of the British troops, sent from New-York in a fleet of forty sail. They landed at West Haven, to the number of a thousand, and about the same force at East Haven. The enemy formed a junction at New-Haven, and took possession of the town, and held it about eight hours, giving it up to ravage and plunder. They were incensed at the trouble given them by the brave yeomanry, and students of Yale College.

As the enemy passed where the defenders of the soil could form an ambush, the former were harrassed severely by a well directed fire. Colonel Burr has often mentioned this incident in his military life as a proof of the confidence that soldiers, however raw and undisciplined, have in one who sustains a reputation for discretion, skill and bravery. These troops solicited him to take the command of them when he was hardly able, from sickness, to mount his horse.

Colonel Burr tendered his resignation to General Washington, but he never was discharged, for the general was unwilling to lose such an efficient officer from the army.

Colonel Burr, in 1780, was on a visit to Mrs. Provost, the lady who not long after became his wife, when Mrs. Arnold stopped at her house, on the way to the city of New-York, in order to join her husband. At the first news of his treason, Mrs. Arnold excited the sympathy of every one. Her lamentations and screams might be heard at a distance, and many feared that her reason would be shaken from its throne. Several of the officers at West Point at that time, wrote most affecting descriptions of her wretchedness ;

and some went so far as to think that the wounds given to the heart of an elegant and an accomplished woman, deserved as much punishment as the treason Arnold had committed. Washington was deeply affected by her situation, and rendered her every assistance in his power, and with great gallantry sent her a letter of safe-conduct to the lines. Mrs. Provost was the widow of a British officer, and to her Mrs. Arnold could unbosom herself; and being assured that no one was near but those of strict honour, she threw off the mask, thanked God that the farce of hypocrisy was over, for she hated to be an actress any longer. She said that she had commenced the correspondence with the British commander, and had brought her husband to the deed at last, stating, also, that she had long abhorred the American cause, and now was happy that she was free from the rebels. This spoils the pathos of many brilliant descriptions of her patriotism and sensibility; but, nevertheless, the generous feeling in which they were written will still remain as proofs that there was nothing revengeful or low in the dispositions of those who achieved our independence.

After Colonel Burr left the army, he commenced the study of the law, under the direction of Thomas Smith, Esquire, a good practical office-business lawyer. With him Colonel Burr confined himself entirely to an acquaintance with forms, and trusted to himself to gain a knowledge of principles. He devoted himself so exclusively to this branch of his profession, that he thought himself qualified to practise, and made preparations to get admitted to the bar. He knew that the old lawyers, who had been, during a good part of the revolution, out of business, would oppose every

obstacle to his admission to the bar ; he, therefore, did not apply to the bar for their interference in his behalf, but offered himself to the court for examination, insisting that times had changed, and that every one of information had an unquestionable right to avail himself of his acquirements, untrammelled by former usages. The court listened to the argument, and gave him an opportunity to prove that he was well qualified for his professional duties. When this point was gained, he was safe : the examination took place ; the judges were satisfied that he was competent to commence the practice of the law, and licensed him as attorney and counsellor. He commenced practice in Albany, and soon secured a fair share of business ; but when the British evacuated the city of New-York, he removed to this larger field of practice.

In the year 1784, he found himself elected a representative from the city to the state legislature, and at once took a prominent part in the business of that body. He was distinguished for sagacity and eloquence. He avoided every thing rhetorical or impassioned. His manner in debate was cool and determined as in action. His language was select, and his manner firm but courteous. He was neither awed by rank nor age, nor frowned down by furious opponents. He at once had the audience, and the conquest of the members never follows far behind. His firmness had been tested on the battle-field, and his political and moral courage was now as well understood as his military. Assailed through the medium of popularity, interest and ambition, he never swerved from his own plan of action ; and at length all knew his firmness of purpose, and no one doubted his ability to

sustain himself, whoever might be his antagonist. One instance of this characteristic conduct, among many, may be named. The mechanics of the city of New-York had taken up the impression that they would follow the fashion of London, in requiring that every craftsman should serve an apprenticeship in the city of seven years, before he should be allowed to follow any trade or calling connected with the mechanic arts. They petitioned the legislature for a law to this effect. Colonel Burr opposed this, as anti-republican, and injurious to the public weal. At the same time, there was a proposition before the same body to carry into effect a plan for disposing of the public lands, then of great amount. The speculators were powerful, and had, by a union with the mechanics, a controlling influence in the legislature. Colonel Burr strained every nerve to oppose this nefarious union and its effects, but in vain. The plan for selling the lands passed both branches of the legislature by decided majorities ; but he did not despair of saving the state from this baneful coalition. By his influence with the council of revision, he stopped the bill in that body, and when sent back it was lost. The judicious part of the community, among all classes of people, applauded his course ; but a few enraged mechanics, on his return to the city, expressed a determination to mob him. Many of his friends offered their services to protect him. "No, gentlemen," was his reply to their kind offer, "I will live no longer than I can protect myself." He would not have even his doors fastened ; and this fact being known, no one felt disposed to be the first to molest him ; and in a short time, this very act of firmness and energy made him popular with the very men

whose wishes he had opposed. Such are the effects of political courage. The restless spirits of the revolution had, in a measure, exhausted themselves by their labours and sufferings, and in general were satisfied with what they had done ; but many of those who never had ventured into the field in the hour of danger, now showed their ambition in the path of politics and speculation, and the country, from the east to the farthest south, had well nigh been shipwrecked by them ; but, thanks to heaven, there was sagacity and virtue enough left to save the country. Much evil, however, was done. Those who gathered up a little money, while their brethren had been lavishing their blood and treasure, wished to seize all the monied institutions, and to direct every heart-pulse of the nation. They did, in fact, effect much ; but they could not control all things to the extent of their wishes.

Soon after Colonel Burr came to the bar, the courts were crowded with business. Almost every principle, particularly of mercantile law, was to be settled. There had not then been a single reporter of any case in the thirteen states. The decisions depended upon memory, or some uncertain rules assumed by the judge or counsel. Every legal point was argued over in every cause. This, if it gave counsel great labour, if they were learned, secured them great advantages. The court listened to those who had the best collection of decisions in his mind with great attention, and this was sure to raise the advocate in the estimation of his client. Colonel Burr was almost sure to be invited to act as counsel for plaintiff or defendant in almost every cause of importance that was to

be argued in the state before the higher courts. If he had rivals, he had no superiors. Of those of his own age, Alexander Hamilton alone can be distinctly considered his rival, although there were several powerful lawyers at the bar. These distinguished advocates were frequently engaged on the same side; and when they were so, the cause was sure to be thoroughly sifted, and powerfully argued. They were unlike each other in manner, in a deliberative assembly, or at the bar. Burr seized upon the strong points of his cause, and laid out his whole strength on them, making the most condensed of all possible arguments. His manner was calm, direct, and as sententious as if he was only citing the maxims that applied as rules in the case. However strong the excitement, or great the provocation, he never, for a moment, lost his balance. He clothed his thoughts in plain, sound, good old English, and so distinct was his delivery, that every plain, honest juryman understood him. His tones, though not authoritative or dictatorial, were firm, and seemed to bear with them an assurance that he believed his own arguments. Before he left a jury he was quite certain that he had left a lamp to guide them in any clouds or darkness that ingenuity or eloquence might raise around the subject. Such was his whole demeanour, that the jury never braced themselves against him as against the strong man who would bind their understandings, and lead them in thralldom wherever he chose. Nor were they ever on their guard against the influence of zeal, pathos, or silvery tones, so often bewitching to those who are better judges of sound than sense. He neither aimed to awaken fears, or excite surprise or admiration, nor to

lead by any fascinations. If he aroused their sympathies, it was by pouring a clear current of thought into their minds, not by any parade of eloquence. There are but few specimens of his forensic eloquence extant, but hundreds have a distinct remembrance of his whole manner. His great rival, Alexander Hamilton, was more laborious, more redundant, more lavish of epithets. He saw the whole field, and in passing, removed every stone in his way so carefully and gracefully, that one was frequently intent on the man, and on the orator, rather than on the subject. He was often earnest, and sometimes impassioned, although he strove to keep down his feelings. Hamilton had the copious flow of Tully; he spoke as one whose treasury of words was inexhaustible, and who had the proper command of every syllable. Burr's style resembled that of Sallust: terse sentences, choice words, of a direct application, but such as every one knew their meaning. They had each his devotees, but both were admired and applauded. Such models have had a fine effect on the eloquence of the bar, and of the legislature of the state. In the style of speaking in each place, among the best informed, there is none of that rant which is often found in some parts of our country, and which has often passed for eloquence in the halls of congress, and with the spectators even in the supreme court room; and it is to be feared, that this charlatany will not soon be cured. The excitable subjects which of late years have been brought up and discussed in the house of representatives has an unfavourable effect on the mode of speaking in congress; and perhaps it may be said that the almost Colliceum size of the chamber in which the re-

presentatives meet, may also have its influence in giving a harshness of voice and a fury to gesticulation. The race of lawyers who came next to Burr and Hamilton, such as Van Vechten, Spencer, Kent, and others, were men of good sense and taste, and have continued the medium class of speaking, which is found between the cold, affected nicety on the one hand, and the fire and fury of a caucus harangue, delivered on the eve of an election, on the other.

Soon after the adoption of the federal constitution, the commerce of the city began to flourish. Banks were established for the convenience of all classes of people; but it was soon found that those who composed the minority had but a small chance for discounts. Colonel Burr had seen this inconvenience, although he had never felt it. He made influence, in the year 1792, to have the Manhattan Bank established. It was put under directors of different politics from the other banks, and a liberal policy pursued in loaning their money. The aristocracy had made use of the banks as one means to extend and secure their power; but this system could only succeed for a while. The mystery of banking was found out to be a simple process of business, without a particle of witchcraft about it. A president of a bank was a grandee of the first order, and a cashier ranked with the ancient order of priesthood. A mechanic never ventured to ask for a discount in those days, without some merchant as a patron and friend, and then the loan was obtained as a special favour. The obtaining of the charter for the Manhattan Bank, in some measure broke down these exclusive privileges. Connected with the charter was a stipulation of bringing

water into the city. This did not, for many years, pay its own expenses, and was, of course, a tax on the income of the bank. Much clamour was raised about the charter of the Manhattan Bank, but there is no other charter but the Chemical, that has stipulated to do any thing for the public good, in the way of a bonus to the public. For many years it discounted freely, and, perhaps, Colonel Burr might have had some accommodations from it, but he did not want it then, nor ask for it. The bank has been in good repute ever since it was established, and is among the selected banks for taking the deposits at this period. Colonel Burr might have been made president of the Manhattan Bank on its establishment, but he never sought or would accept of any office of pecuniary responsibility. He had too many matters of interest and ambition to engage his mind, to enter into the details or the profits of monied institutions. His general speculations were of lands, of which he was an excellent judge, and foresaw their rise in value, and made use of his judgment in purchasing. His land speculations would have made him rich, if he could have spared time from his professional and political labours to have made the best use of them. The titles to many portions of property, from the changes the city and country had gone through, were not so clearly traced as would satisfy the scrupulous, but were sufficient for the fearless speculator. I have said that Colonel Burr did not accept of offices of pecuniary responsibility, apprehensive that he could not devote sufficient time for the fulfilment of their duties. To all the little current of charities he gave freely as required, but he spent no time in seeing to their distribu-

tion, leaving that necessary, but to him irksome business of appropriation, to others, who were willing to devote their time to it. He seldom attended caucuses or primary assemblies, for he knew it was easier to guide a body of wise legislators than a small number of ignorant men in the primary assemblies. He seldom headed remonstrances, memorials, or addresses of any kind. He went upon one great and excellent principle, and that was, never to fritter away his time and influence on trivial subjects. In every thing he undertook he was master of the minutest detail, and saw to every thing himself; still, in all those little matters of civil relations, in limited communities, he never sought, and, in fact, constantly shunned. He never courted the mob by mingling with them and sharing their amusements, for it was seldom that they met him. He made no converts by "*pewter mug*" stories, and they liked him the better for all this abstraction from the great body of democracy; but whenever he came in contact with the humblest of his admirers, it was well known that he treated them so blandly that his manners were remembered when the whole conversation was forgotten. His manners were the most courtly of any one of his age. He had not the parade of Morris, nor the gravity of Jay; but he never, for a moment, forgot himself by assumption or too much familiarity. The self-possession which he always sustained gave him advantages over other men who are vassals to their passions, and at times cannot hide their weaknesses.

In 1790, Colonel Burr was appointed attorney general of the state of New-York. This office, at that time, was an arduous one. Every thing required

regulating and settling. During his term of service, the claims of those who had been in the New-York service during the war, and others who had become creditors of the state, were presented to the legislature for adjustment. The subject, in all its bearings, was left to a commission of three gentlemen. The treasurer, the comptroller, and the attorney general of the state, formed this commission. Colonel Burr prepared an elaborate report. He classed the claimants, and fixed the rules for each class. The report of these commissioners was so satisfactory to all parties that no amendment was offered to it, and it stands on the journals of the legislature entire. The principles contained in the report were adopted by other states in their adjustment of similar claims. I have made a short excerpt from the record, to make it a matter of history.

The bill last mentioned, having been brought in by a committee appointed on the 25th January last, to prepare and bring in a bill pursuant to the general tenor of the report of the commissioners appointed by an act passed the 8th day of March, 1790, to receive and state accounts and claims against this state :

Ordered, That the report of the said commissioners be inserted in the journal of this house.

The said report is in the words and figures following, viz :

The treasurer, the auditor, and the attorney general, pursuant to the act entitled, an act to receive and state accounts against this state, did, forthwith after the passing of the said act, give such notice of their appointment and duties, and of the times and places for the execution thereof, and of the period by the

said act limited for receiving and auditing claims, as is directed by the said act, and do herewith transmit to the said legislature their report upon the accounts and claims against the state, which have been thereupon exhibited.

The anxiety of the commissioners to render the execution of this trust useful and acceptable, has occasioned a delay of some weeks. If their success in this attempt has been in any degree proportioned to their attention to the subject, it will furnish their excuse. Indeed, when the legislature shall have seen the number, the variety, and intricacy of the matters which have been submitted to the consideration of the commissioners, it is hoped that a further apology will be thought unnecessary.

The commissioners have endeavoured to reduce these various demands into classes, in such manner as to present to the legislature, in one view, all which have appeared to depend on similar principles. Notwithstanding their utmost attention to this object, they have found it necessary to report on a considerable number of single cases. As the authority under which they acted required of them a state of facts, together with their opinion thereupon, whenever there was a want of uniformity, either in the facts submitted or in the principles to be applied in the determination, they have thought that strict justice could not be done to the merit of the claim without a separate discussion, though this has tended to lengthen the report beyond what could have been wished, and to a degree which perhaps may, in some instances, be thought prolix, yet the commissioners supposed it of moment that their investigation should be not only satisfactory to them-

selves, but that it should be rendered apparent to the citizens upon whose claims they have pronounced, that each hath received a distinct attention, and that demands substantially different from each other have not been inconsiderately blended. If the perusal of the proceedings now submitted shall give an impression of this kind, it will, in the opinion of the commissioners, tend to produce a more cheerful acquiescence in the determination of the legislature, when that determination shall reject the demand, and prevent a revival of claims which shall now be extinguished. The commissioners have thought that these are desirable objects, and have therefore been cautious of generalizing, so as to destroy real distinctions, or suppress a fact even of the lightest importance.

In order to preserve uniformity in their opinions, the commissioners have adopted certain principles, from which the hardship of any particular case hath not induced them to depart. The most general and important of these are—

1st. Where any species of claims is barred by an act of the legislature, they have considered the act as a bar to their investigation, further than to ascertain it to be unquestionably within the meaning of the law. This principle will be found to extend to all claims for pay and rations alleged to be due for militia services, to most of the demands against forfeited estates, to all claims for property sequestered, when the sequestration was warranted by the resolutions of the convention, and the authority of the commissioners; to all claims of payment of state agents' notes, and to some other particular cases which will appear in the report. In support of this principle, the commissioners have

considered that to sanction, by their opinion, the admission of claims against the spirit and letter of a statute, would be an impeachment of the wisdom of those laws, would be arrogating an authority not exercised by or permitted to any court of law or equity, and would open a door to the importunate and perhaps least deserving class of citizens, whilst others, having similar demands, had witholden them, from a spirit of submission to the laws, by which these demands were precluded. The commissioners have been confirmed in the propriety of these ideas, by a reflection, that if it shall, for any reasons, seem expedient to the legislature to repeal or suspend the limitation of those, or of any of those statutes, the avenues of redress will at once be open through the ordinary officers of the state, without further legislative interposition, and the opportunities of recompense would then be notorious and equal; but that the redress, if any should be obtained through the medium of the commissioners, would be partial in its operation, and to the exclusion of those who, with equal merits, had acquiesced in the known laws.

2d. In the cases of claims for services done, and supplies furnished during the war, when the demand, though originating under the authority of this state, is properly against the United States, the opinions of the commissioners is against the allowance of any recompense, because those claims should more properly be preferred to Congress; and for that this state can have no credit with the United States, for payments or assumptions, after the 1st October, 1778.

And that, therefore, the claimants, having neglected to exhibit their demands within the period during which

this state could, without loss, have assumed them, cannot complain if they are now referred to the proper tribunal. Payments by the state were, in all such cases, at all times of favour, and not of right.

3d. All claims for subsistence and services of the levies and militia, or other troops, composing a part of the continental army, or destined to join the army, and moving to such places of destination, or under the command or orders of a continental officer, and all claims for supplies and services performed for such troops, are considered as proper against the United States only, and are classed accordingly. The commissioners have been led to a more strict attention to this distinction by the reasons just before mentioned, and are warranted by the practice of the continental commissioners for settling accounts, in declaring, that such accounts and demands were proper against the United States.

Principles of more limited operation, and other remarks, will appear in those parts of the report to which they apply.

Explanatory of particular parts, and of the general form of the report, it may be proper to observe—

That where the claim or account appears upon the face of it to be evidently against the United States only, or for other reasons palpably inadmissible, the commissioners have thought it would have been superfluous to state the proof, and have, therefore, in those cases only, given such abstracts of the claim, or account, as suffice to render the exception apparent.

In giving their opinion, the commissioners have not detailed all the reasons which led to it, but have given a summary of such as appeared to them most conclu-

sive ; and as well in this as in stating the facts, have aimed at as much brevity as appeared to them to consist with perspicuity. If they shall be found, in any instances, obscure, a reference to the claim and proofs will probably elucidate them. When the claim is provided for by existing laws, the opinion of the commissioners refers the claimant to the mode pointed out by such law.

Demands of different natures, by the same person, are placed under the head which comprises the greater demand. The claim and vouchers being in such cases usually contained in the same paper, or annexed together, it was necessary so to place them in the report that there might be no confusion in the references.

To produce facility in the review of the proceedings, the documents referred to are all herewith delivered, and are in bundles marked agreeably to the heads under which they are classed.

CLAIMS FOR MILITIA PAY.

	£.	s.	d.
A claim for the pay and rations of the Goshen regiment, Col. Tastins,	966	14	4½
The like for Col. Claughry's regiment, under command of Col. Philips,	1470	16	11
The like of part of the same regiment, under command of Lieut. Col. Newkirk,	242	19	7¾
The like for Col. Van Brunt's regi- ments,	595	2	0
The like for Capt. Eleazer Slawson's Company,	752	6	9

	£.	s.	d.
The like for Capt. Berrian's company,	97	9	9
The like for Capt. Pardee's company,	296	0	2
The like for Lieut. Lowder's company,	1461	2	4
The two last preceding claims appear to be for the same service, and though differing so largely in amount, are both sworn to.			
The like for Capt. H. Rhea's company,	139	12	4½
The like for Capt. Ousterhood's company,	56	14	3
The like for Capt. Wood's company,	162	18	10
Claim of John Hunter, for balance of pay and rations due him as an officer in the militia, while a prisoner,	88	2	0
William Lamb, Isaac Patchim, jr., and and Freegift Patchim, claim for pay due them while prisoners, £88 10 8 each,	253	12	0
John Reilay, for pay and subsistence for himself and his company of rangers in service, by order of the commissioners of conspiracy of Albany,	320	16	3
Capt. Nicholas Staats, for pay for part of Col. K. Van Rensselaer's regiment, in service, by order of the committee of Albany,	45	0	0
Joseph Elliot, for his service in the militia as a lieutenant,	13	0	0

		£.	s.	d.
Joachim Miller, for service in the militia as lieutenant,		13	17	4
John Keyson,	£8 0 0			
Matthew Geeson,	21 6 8			
John Bullman and	} 48 0 0			
Henry Bullman,				
	<hr/>			
	£77 6 8	77	6	8

Privates
in service.

Abel Gale, for services as quarter master of Allison's regiment of militia, 21 11 8

By an act passed 27th April, 1784, entitled, "an act for the settlement of the pay of the levies and militia, for their services in the late war, and for other services therein mentioned," the mode in which the rolls and abstracts for pay and subsistence are to be made out and settled, is particularly pointed out, and competent powers and directions for the liquidation of those accounts, are thereby given to the treasurer and auditor.

By the 14th section of an act passed 21st April, 1787, entitled, "an act for the relief of persons who paid money into the treasury," &c. &c. &c., the afore-said act of the 27th April, 1784, is repealed. The commissioners consider this repeal as an exclusion of all further claims for pay and subsistence of the militia and levies. They are constrained to adopt this opinion, not only from the obvious intention of the act, but because by the absolute repeal of the act of 27th April, 1784, there remains no prescribed mode of authenticating these demands. That any rules which the discretion of the commissioners should lead them to adopt, would have been unknown to the claimants,

who could, therefore, have had no opportunity of adapting their demands to such rules, and because, if the legislature shall be disposed to direct compensations for such services, it will, in the opinion of the commissioners, be most properly affected by a revival of the said act of 27th April, 1784, with such further provisions and checks as may be thought necessary, or by some other general statute to be passed for those purposes, and which may give equal opportunities to the claimants, and place the liquidation and settlement of such demands in the hands of the ordinary officers of the state. Claims for services, supplies and losses, which, if admissible, can be made against the United States only.

[Here other accounts follow.]

GERARD BANCKER, Treasurer.

PETER T. CURTENIUS, State Auditor.

AARON BURR, Attorney General.

The next year Colonel Burr was appointed one of the judges of the supreme court of the state, but declined the honour, as incompatible with a discharge of his other duties. This was a judicious appointment, for he was eminently qualified for a judge—learned, patient, discriminating, inflexible, and decisive. This post of honour was not in the course of his ambition. The field was not sufficiently extensive for him. He unquestionably looked forward to something of more importance.

In the year 1792 Colonel Burr was elected to the senate of the United States, and took his seat in that body on Friday the 16th of November of that year. His colleague, Rufus King, was a man of splendid re-

putation, but of different politics from himself. The federal party were the majority numerically, and it could not be doubted but they had the superiority in regard to talents. From Massachusetts, at that time in the senate, were Caleb Strong and George Cabot. Strong was one of those puritans who was wise as the serpent, and harmless as the dove: nothing escaped him; he looked to every passing event as one answerable at that time, and for ever. He was an excellent lawyer, a solemn and profound statesman, always at his post. His colleague, Mr. Cabot, was a fine gentleman, a man of the world, of the highest intellect, of the most attractive manners, possessing a shrewdness not surpassed by any one, and an eloquence unequalled of its kind. His words fell as "*vernal snows*," and pure and refreshing as the manna in the camp of Israel. His person was most elegant. When he arose to speak, all were attentive, and his influence went beyond the lines of party. He was intimate with Colonel Burr, and no man among his best political friends ever was more enthusiastic in his praise than his political opponent from New-York. They were not estranged by political differences, but often met each other at the social board. John Adams was then vice president, and, naturally of a social disposition, he joined in the conversation of the dinner table, with all that earnestness which belonged to his ardent temperament, and which lasted with him through life. Every thing then was a matter of experiment, and, of course, the nature of the government was a constant topic of discussion; and it must be confessed, that most of these distinguished minds had serious doubts of its permanency. Colonel Burr did not hesitate to

express his opinion to that effect. This opinion, therefore, did not exclusively belong to any one party, but was a deep-rooted fear in the minds of most discriminating men. We of this day, too, often take a set of opinions, and charge them to party, when they belong to individuals of all parties. When the question of the British treaty came before the senate for ratification, Colonel Burr was opposed to it, not thinking it so good a one as might have been obtained; but our merchants, who had lost by the British in the capture and condemnation of their property, saw a prospect of remuneration by that treaty, and urged the senate most strenuously to ratify it. Just before this subject came before the senate, he was sounded on the acceptance of a military commission for the western army, but he declined it, thinking that the government would not allow him to decide the contest with the Indians in the manner that would best suit his own views. An opinion was then prevailing that the Indians could, and ought to be civilized. This was not Colonel Burr's opinion. He had no idea of fighting a little and arguing a good deal.

A question of importance as to the eligibility of Mr. Gallatin to hold a seat in the senate came before that body, and was discussed with no common zeal, and with great talent. Mr. King, Colonel Burr's colleague, was opposed to the claims of Mr. Gallatin, and used his whole strength in the cause, as did Caleb Strong, and others of distinction in that body. Mr. Gallatin has, for more than half a century, been a subject of interest to the people of the United States.

Albert Gallatin was a native of Geneva, but became a citizen of the United States previous to the com-

mencement of the revolutionary war. He landed at Machias, and was there when an attack was made on the place, and bore arms in defence of the inhabitants. From Machias he went to Cambridge, where he made an engagement as a professor of the French language; but having received a communication from Robert Morris, he repaired to Philadelphia, and soon afterward was a resident in the state of Pennsylvania. Mr. Wirt, in his life of Patrick Henry, says that Gallatin was known and highly respected by that great orator. In congress, he was considered the ablest financier that had appeared in this country. He made that science a constant study; and his countrymen had made more advancement in political economy than most other nations. Scientific and accurate beyond all around him, his opinions had great weight with all, even his political opponents. Every appropriation bill he sifted to the bottom, and not a dollar was expended without his knowledge. In difficult times he was made secretary of the treasury, and sustained himself in that difficult office. He was afterward minister plenipotentiary to France, and a commissioner in making the treaty. In every office he has filled, he has shown that he possessed extraordinary abilities. He has often been attacked with great violence by his opponents, charged with being unfriendly to the government; but his whole conduct has answered and refuted these charges. At this time (1835) he is at the head of a banking institution in the city of New-York, in a vigorous old age, and takes an interest in all that is passing. He was, while in Congress, eulogized in the letters of Curtius, written by a young Virginian, Mr. Thomson, and addressed to Chief Justice Marshall. Thomson's letters had a surprising circulation

in Virginia, and were highly applauded in that section of the country ; but at the east they were considered as being written in a style too luxuriant for grave matters. Thomson died before he was two and twenty years old, and was eulogized by John Randolph as the greatest genius he ever knew. The following quotation from his letter addressed to Judge Marshall, is a specimen of his writing.

“ When I select the names of Gallatin, Livingston and Nicholas, I am not unmindful of the merits and talents of many other gentlemen. I have selected them because they have been exposed to the most cruel obloquies of your party. Mr. Gallatin has been persecuted with all the detestable rancour of envy and malice. The accuracy of his information, the extent of his knowledge, the perspicuity of his style, the moderation of his temper, and the irresistible energy of his reasoning powers, render him the ablest advocate that ever appeared in the cause of truth and liberty. Patient and persevering, temperate and firm, no error escapes his vigilance, no calumny provokes his passions. To expose the blunders and absurdities of his adversaries is the only revenge which he will condescend to take for their insolent invectives. Serene in the midst of clamours, he exhibits the arguments of his opponents in their genuine colours, he divests them of the tinsel of declamation and the cobwebs of sophistry, he detects the most plausible errors, he exposes the most latent absurdities, he holds the “ mirror up ” to folly, and reasons upon every subject with the readiness of intuition, and the certainty of demonstration. Elevated above the intrigues of parties, and the weaknesses of the passions, he is never transported

into any excess by the zeal of his friends or the virulence of his enemies. His object is the happiness of the people, his means economy, liberty and peace, his guide the constitution. The sympathies which fascinate the heart and mislead the understanding, have never allured him from the arduous pursuit of truth, through her most intricate mazes. Never animated by the impetuous and turbulent feelings which agitate popular assemblies, he preserves, in the midst of contending factions, that coolness of temper, and that accuracy of thought, which philosophy has hitherto claimed as the peculiar attribute of her closest meditations. He unites to the energy of eloquence, and the confidence of integrity, the precision of mathematics, the method of logic, and the treasures of experience. His opponents slander him and admire him; they assail him with ignorant impertinence and pitiless malice, and yet they feel that he is the darling of philosophy, the apostle of truth, and the favourite votary of liberty. Their hatred, like the rebellion of Satan, proceeds from the impatience of any superiority. There is a daily beauty in his life which makes them ugly. Instead of imitating his excellence, they attempt to conceal it by a mass of obloquy; instead of reverencing his unparalleled wisdom and virtue, they sharpen the dagger of falsehood, and prepare the poisoned arrows of envy. The men who are supported by a foreign faction, have the effrontery to vilify him because he is a foreigner. Virtue and genius are not peculiar to America. They have flourished in every country, and in every age. The merits of men are not to be ascertained by geographical boundaries. The mind has no country but the universe. Patriotism

is not a narrow and illiberal prejudice in favour of the soil upon which we happened to be born. It is a rational and noble attachment to the country which gives us protection, and which secures our happiness. It is not incompatible with universal philanthropy ; on the contrary, it is a modification of benevolence, softened by society and strengthened by gratitude. Mr. Gallatin is attached to the constitution because it is free, to the people because they are generous and amiable, and to the country because he has found in it an asylum from oppression and misery. Are not these ties at least as binding as the shackles of prejudice and habit ? But the conduct of Mr. Gallatin is his best vindication. This foreigner has defended the constitution against the attacks of native Americans, and has displayed a noble ardour in the defence of his adopted country, whilst many of her sons repose in inglorious apathy, and whilst others assail her with detestable treachery and unnatural hatred. I will not compare your political conduct with that of this much vilified foreigner. I promised to avoid acrimony of censure, and I should violate that promise if I began this comparison. I have performed the duty which I undertook to discharge. The people will decide between us. It is for them to determine whether I have convicted you of insincerity and deception, and whether I have demonstrated that your opinions are incompatible with their happiness, and with a genuine attachment to a republican government. Their decision will be fatal to you, or disgraceful to me. It seldom happens that both the accused and accuser are acquitted of blame. I hope that I shall not be convicted of having borne false testimony

against you ; but if the public adopt this opinion, I shall find complete consolation in the honesty of my intentions. There is nothing which could shake my fortitude but the reproaches of the people, and yet I believe that even amidst their execrations, I should find ‘in my soul a drop of patience.’

“Timid men will wonder at the boldness with which I have addressed you. Their frigid souls cannot comprehend the holy enthusiasm which animates me in the cause of truth and justice. Whilst they anxiously estimate difficulties, and meanly calculate dangers, I will follow the sacred impulse of conscience and zeal, even if it leads to ruin and martyrdom. I am prepared to encounter the rage of the numerous and powerful party who idolize you. Their vengeance will pursue me through life, and yet I would not suppress or soften a word for all the applauses and all the honours which they can bestow.”

From looking over the votes and conduct of Colonel Burr, it seems that he did not own himself as a partisan of either the federalists or democrats ; in fact, it was always known that he cherished no partiality for democracy when he was a candidate for the first or second office in the United States. There were men of all parties who wished to see Colonel Burr elected to the presidency. They wished for a man “fit alike for the field or the closet,” and in him that man was to be found. He had discovered as fearless a spirit in the senate as in the field. His grasp was large, and he was as indefatigable as brave and philosophical. When the votes for president were opened for the fourth election, the votes stood, 73 for Thomas Jefferson, 73 for Aaron Burr, for John Adams 65, for

Charles C. Pinckney 54. The house of representatives was now under the necessity, according to the constitution, to decide by vote between Mr. Jefferson and Mr. Burr, who should be president and who should be vice president. The federalists, in general, preferred Colonel Burr; they thought, to use the language of one of their orators, that he was a greater and a better man than Mr. Jefferson. General Hamilton, who had great influence with his party, was opposed to Colonel Burr. He was strongly impressed with the talents of Colonel Burr, but this federal leader's imagination was diseased with apprehensions of his ambition, and he thought that the country had better be amused with the dreams of philosophy than taught to become military. The delegations of the states, in the house of representatives, were a long time in deciding the question between the two candidates; and it is well known that Colonel Burr could have decided the question at once if he would have pledged himself in any way to the federalists. This he would not do. His enemies, some time afterward, charged him with intriguing with the members, but this has been amply refuted.

The government being organized, Mr. Jefferson as president, and Mr. Burr as vice president, on taking his seat as president of the senate, he made a speech to this body, pointing out the course he should pursue in the despatch of business. It was soon found that he was master of the rules and orders of the senate, and every parliamentary usage; and no man has ever made a better presiding officer. He was punctual, courteous, discerning, and ever ready to give the debate a gentlemanly direction, and the business a proper course.

There are many grave and wise men who come into the senate of the United States without any experience in legislation, and generally, too, of an age in which they find it hard to acquire rules and orders. A presiding officer has many opportunities of assisting them in correct procedure. This was done by Colonel Burr, without any regard to party. He was a man of taste and fine manners, and always came well dressed into the senate chamber, and insisted that all the members should be attentive to their dress and their manners, and seldom indeed was this regulation infringed upon.

Colonel Burr presided on the trial of Judge Chase. On the 5th of January, 1804, a resolution was offered that a committee be appointed to inquire into the official conduct of Samuel Chase, an associate judge of the Supreme Court of the United States. The resolution passed by a large majority, 79 to 37. The newspapers took up the subject and tried, the case ; some condemning and more acquitting the judge. On the 12th of the following March, the committee of inquiry reported, and Judge Chase lost no time in sending a memorial to the house, requesting that articles of impeachment might be formed, and that he be put on his trial, for this state of things was insufferable. Articles of impeachment, to the number of seven, were presented to the senate, and a trial of Samuel Chase demanded. Mr. John Randolph, lately deceased, was chairman of the managers, on the part of the house, assisted by Messrs. Rodney, Nicholson, Early and Nelson. On the 25th of January, 1805, the senate chamber was put in fine order by the direction of the president of the court. It was the first trial of the kind that had ever taken place in the country, and he

wished that it should be conducted in the best possible manner. The court was opened in the old Norman style, O yez, O yez, O yez, &c. The judge was called before the court, and he appeared, with his counsel, Luther Martin, R. G. Harper and Joseph Hopkinson. The articles, although seven in number, contained, in fact, nothing more than some misdemeanours or irregularities in several state trials, those of Fries, Callender, and others. After hearing the answers to the articles by Judge Chase, the court adjourned, to meet on the 9th of February, when Mr. Randolph opened the case, and proceeded to examine his witnesses. On the 15th, Mr. Harper opened the defence. The court met, from day to day, until the first of March, 1805, when the trial ended in the acquittal of Judge Chase. The talents of the managers, and the still greater reputation of the counsel for the respondent, as well as the novelty of the trial, attracted a great concourse of spectators. A place was allotted to the ladies, who flocked to hear the eloquence of the speakers on both sides. Mr. Randolph was unfortunately out of his element. He was no lawyer, nor had he ever, for a moment, disciplined his mind to a business course in any thing. He spoke to but little purpose. He embarrassed his colleagues; and his satire, generally so pungent, was misplaced, and of course pointless. The other managers proceeded with regularity and correctness, and displayed no ordinary intelligence. The arguments in defence of Judge Chase will long be held in high estimation, as specimens of our forensic eloquence. They were shrewd, forcible, clear orations. Judge Chase was acquitted, as he should have been; but his trial was a great benefit to the nation. Our

judges, throughout the whole country, had practised a coarse, gruff, haughty manner, as they thought, calculated to preserve their dignity. Every inferior judge assumed an air of wisdom, and often dealt out crude, illegal decisions, in wretched English, with all the solemnity of an oracle. Republicans as we were, we submitted to it for a long while, but it became unsupportable to the well educated young lawyer, who saw and despised this relict of an aristocratic and Gothic age. Judge Chase, although an enlightened man, carried this manner beyond all his brothers of the bench, and was not too much punished for his folly. Colonel Burr, as president of the court, set the judge an example which was not without its effect on him and others. He was precise, attentive to the minutest point of etiquette ; but no high toned voice, nor sharp worded sentence, was heard from his lips. He decided every question with coolness, and promptitude, and impartiality. He had made himself master of every rule, order, or ceremony in a state trial, and adhered to them so strictly that he left no room for cavil. During the whole trial, a spectator informed me, that he never heard any thing more than a whisper from the senators or the audience. There were several persons among the audience who had witnessed some portion of the trial of Warren Hastings, and who distinctly avowed that the vice president presided at the trial of Judge Chase with more dignity than the lord chancellor, in the trial of the governor general of Bengal. The proceedings in this trial have been considered as authority ever since, in all the states which had occasion to call together a court of impeachment. The ease and dignity of an intellectual,

learned judge, gives counsel, witnesses, jurymen and parties, great confidence in the elevation and purity of judicial tribunals ; while moroseness, captiousness and affected dignity, agitates, in a greater or less degree, every minister of justice.

It was soon discovered, after Mr. Jefferson came into power as chief magistrate, that he felt a deep resentment to Colonel Burr, for having suffered himself to be voted for as president in the house of representatives, and every one of the president's friends, in a measure, became opposed to the vice president. There was a general belief that he would not be a candidate for the office a second term ; in fact, this situation was not sufficiently active for one so full of life and energy as Colonel Burr. This his friends saw, and proposed to him to suffer himself to be a candidate for the office of governor of the state of New-York. The contest was a fierce one, and the friends of Colonel Burr were defeated. This was not all ; probably the personal rencontre between him and General Hamilton grew directly out of the political excitement at this period. It is with no slight embarrassment that I touch upon this affair. The termination of that duel, and the great space General Hamilton held in the eyes of a respectable portion of the people, made it an affecting and a memorable event. The feelings of the people, at that time, were generally enlisted on the side of Hamilton. The newspapers, from Georgia to Maine, were full of lamentations on his fall, and not a few of them indulged in severe and unfounded remarks upon Colonel Burr. The papers, however, were not so severe as the sermonizers on the occasion.

Throwing aside all the language of grief or indignation of that period, I shall, as a historian of the fact, meet the subject without fear or prejudice. They were both soldiers of the revolution, and had formed their ideas of honour in camps, and such as they had received from the pages of classical history, or at least from the ages of chivalry. Both were scholars, and deeply imbued with notions of heroism. At the time when the event happened, duelling was greatly in fashion, and so frequently sanctioned by men of the first standing, that there were but few distinguished individuals in the community in which these combatants lived, that had not, directly or indirectly, been engaged in an affair of honour. It will not be denied that General Hamilton, in his zeal in politics, had indulged himself in severe remarks upon the character and conduct of his political antagonists, and among others upon Colonel Burr. This had frequently reached the ears of Colonel Burr; but at last it came too directly for him to bear it any longer. On the 18th of June, 1804, Colonel Burr sent General Hamilton the following note, which, with all the others that passed between them and their seconds, I have taken from the pamphlet which was issued from the press of William Coleman, editor of the Evening Post, and the warm friend of General Hamilton. Their genuineness cannot for a moment be questioned. Each reader will draw his own inferences from the facts, but it would be flinching in the writer not to express an opinion that the subject of this memoir was no more to blame than his opponent.

NEW-YORK, June 18, 1804.

SIR—I send for your perusal a letter signed Charles D. Cooper, which, though apparently published some time ago, has but very recently come to my knowledge. Mr. Van Ness, who does me the favour to deliver this, will point out to you that clause of the letter to which I particularly request your attention.

You must perceive, sir, the necessity of a prompt and unqualified acknowledgment or denial of the use of any expression which would warrant the assertions of Dr. Cooper.

I have the honour to be

Your obedient servant,

Gen. HAMILTON.

A. BURR.

NEW-YORK, June 20, 1804.

SIR—I have maturely reflected on the subject of your letter of the 18th inst., and the more I have reflected, the more I have become convinced that I could not, without manifest impropriety, make the avowal or disavowal which you seem to think necessary. The clause pointed out by Mr. Van Ness, is in these terms: “I could detail to you a *still more despicable* opinion which General Hamilton *has expressed* of Mr. Burr.” To endeavour to discover the meaning of this declaration, I was obliged to seek, in the antecedent part of this letter, for the opinion to which it referred, as having been already disclosed. I found it in these words: “General Hamilton and Judge Kent have declared in *substance*, that they looked upon Mr. Burr to be a *dangerous man*, and one *who ought not to be trusted with the reins of government*.”

The language of Dr. Cooper plainly implies, that *he* considered this opinion of you which he attributes to me as a *despicable* one; but he affirms that I have expressed some other, *more despicable*, without, however, mentioning to whom, when, or where. 'Tis evident, that the phrase "still more despicable," admits of infinite shades, from very light to very dark. How am I to judge of the degree intended? or how shall I annex any precise idea to language so indefinite? Between gentlemen, *despicable* and *more despicable* are not worth the pains of distinction: when, therefore, you do not interrogate me, as to the opinion which is specifically ascribed to me, I must conclude, that you view it as within the limits to which the animadversions of political opponents upon each other may justifiably extend, and, consequently, as not warranting the idea of it which Dr. Cooper appears to entertain. If so, what precise inference could you draw, as a guide for your conduct, were I to acknowledge that I had expressed an opinion of you *still more despicable* than the one which is particularized? How could you be sure that even this opinion had exceeded the bounds which you would yourself deem admissible between political opponents?

But I forbear further comment on the embarrassment to which the requisition you have made naturally leads. The occasion forbids a more ample illustration, though nothing could be more easy than to pursue it.

Repeating, that I cannot reconcile it with propriety to make the acknowledgment or denial you desire, I will add, that I deem it inadmissible on principle, to consent to be interrogated as to the justness of the in-

ferences which may be drawn by others from whatever I may have said of a political opponent, in the course of fifteen years competition. If there were no other objection to it, this is sufficient, that it would tend to expose my sincerity and delicacy to injurious imputation from every person who may, at any time, have conceived the *import* of my expressions, differently from what I may then have intended, or may afterwards recollect. I stand ready to avow or disavow, promptly and explicitly, any precise or definite opinion which I may be charged with having declared of any gentleman. More than this cannot fitly be expected from me ; and especially, it cannot be reasonably expected, that I shall enter into an explanation upon a basis so vague as that which you have adopted. I trust, on more reflection, you will see the matter in the same light with me. If not, I can only regret the circumstance, and must abide the consequences.

The publication of Dr. Cooper was never seen by me till after the receipt of your letter.

I have the honour to be, &c.,

Col. BURR.

A. HAMILTON.

NEW-YORK, 21st June, 1804.

SIR—Your letter of 20th inst., has been this day received. Having considered it attentively, I regret to find in it nothing of that sincerity and delicacy which you profess to value.

Political opposition can never absolve gentlemen from the necessity of a rigid adherence to the laws of honour, and the rules of decorum. I neither claim such privilege nor indulge it in others. The common

sense of mankind affixes to the epithet adopted by Dr. Cooper, the idea of dishonour. It has been publicly applied to me under the sanction of your name. The question is not, whether he has understood the meaning of the word, or has used it according to syntax, and with grammatical accuracy, but whether you have authorized this application, either directly, or by uttering expressions or opinions derogatory to my honour. The time "when" is in your own knowledge, but no way material to me, as the calumny has now first been disclosed, so as to become the subject of my notice, and as the effect is present and palpable. Your letter has furnished me with new reasons for requiring a definite reply.

I have the honour to be,

Sir, your obedient,

Gen. HAMILTON.

A. BURR.

"On Saturday, the 22d of June, General Hamilton, for the first time, called on Mr. Pendleton, and communicated to him the preceding correspondence. He informed him that in a conversation with Mr. Van Ness at the time of receiving the last letter, he told Mr. Van Ness that he considered the letter as rude and offensive, and that it was not possible for him to give it any other answer than that Mr. Burr must take such steps as he might think proper. He stated farther, that Mr. Van Ness requested him to take time to deliberate, and then return an answer, when he might possibly entertain a different opinion, and that he would call on him to receive it. That his reply to Mr. Van Ness was, that he did not perceive it possible for him to give any other answer than that he

mentioned, unless Mr. Burr would take back his letter, and write one which would admit of a different reply. He then gave Mr. Pendleton the letter hereafter mentioned of the 22d June, to be delivered to Mr. Van Ness when he should call on Mr. Pendleton for an answer, and went to his country house. The next day General Hamilton received, while there, the following letter :—

June 23, 1804.

SIR—In the afternoon of yesterday I reported to Colonel Burr the result of my last interview with you, and appointed the evening to receive his further instructions. Some private engagements, however, prevented me from calling on him till this morning. On my return to the city I found, upon inquiry, both at your office and house, that you had returned to your residence in the country. Lest an interview there might be less agreeable to you than elsewhere, I have taken the liberty of addressing you this note, to inquire when and where it will be most convenient to you to receive a communication.

Your most obedient, and

Very humble servant,

Gen. HAMILTON.

W. P. VAN NESS.

NEW-YORK, June 22d, 1804.

SIR—Your first letter, in a style too peremptory, made a demand, in my opinion, unprecedented and unwarrantable. My answer, pointing out the embarrassment, gave you an opportunity to take a less exceptionable course. You have not chosen to do it ; but by your last letter, received this day, containing expressions *indecorous* and improper, you have in-

creased the difficulties to explanation intrinsically incident to the nature of your application.

If by a "definite reply," you mean the direct avowal or disavowal required in your first letter, I have no other answer to give than that which has already been given. If you mean any thing different, admitting of greater latitude, it is requisite you should explain.

I have the honour to be,

Sir, your obedient servant,

AARON BURR, Esq.

ALEX. HAMILTON.

SIR—The letter which you yesterday delivered me, and your subsequent communication, in Colonel Burr's opinion, evince no disposition, on the part of General Hamilton, to come to a satisfactory accommodation. The injury complained of, and the reparation expected, are so definitely expressed in Colonel Burr's letter of the 21st inst., that there is not perceived a necessity for further explanation on his part. The difficulty that would result from confining the inquiry to any particular times and occasions must be manifest. The denial of a specified conversation only, would leave strong implications that on other occasions improper language had been used. When and where injurious opinions and expressions have been uttered by General Hamilton must be best known to him, and of him only will Colonel Burr inquire. *No denial or declaration will be satisfactory, unless it be general, so as wholly to exclude the idea that rumours derogatory to Colonel Burr's honour have originated with General Hamilton, or have been fairly inferred from any thing he has said.* A definite reply to a requisition of this nature was demanded by Colonel Burr's letter of the

21st inst. This being refused, invites the alternative alluded to in General Hamilton's letter of the 20th.

It was required by the position in which the controversy was placed by General Hamilton on Friday* last, and I was immediately furnished with a communication demanding a personal interview. The necessity of this measure has not, in the opinion of Colonel Burr, been diminished by the General's last letter, or any communication which has since been received. I am consequently again instructed to deliver you a message, as soon as it may be convenient for you to receive it. I beg, therefore, that you will be so good as to inform me at what hour I can have the pleasure of seeing you.

Your most obedient and

Very humble servant,

W. P. VAN NESS.

NATHANIEL PENDLETON, Esq.

June 26th.

26th June, 1804.

SIR—I have communicated the letter which you did me the honour to write to me of this date, to General Hamilton. The expectations now disclosed on the part of Colonel Burr, appear to him to have greatly extended the original ground of inquiry, and instead of presenting a particular and definite case for explanation, seem to aim at nothing less than an inquisition into his most confidential conversations, as well as others, through the whole period of his acquaint-

* June 22.

ance with Colonel Burr. While he was prepared to meet the whole case fairly and fully, he thinks it inadmissible that he should be expected to answer at large as to every thing that he may possibly have said in relation to the character of Colonel Burr, at any time, or upon any occasion. Though he is not conscious that any charges which are in circulation to the prejudice of Colonel Burr have originated with him, except one which may have been so considered, and which has long since been fully explained between Colonel Burr and himself, yet he cannot consent to be questioned generally as to any *rumours* which may be afloat derogatory to the character of Colonel Burr, without specification of the several rumours, many of them probably unknown to him. He does not, however, mean to authorize any conclusion as to the real nature of his conduct in relation to Colonel Burr, by his declining so loose and vague a basis of explanation, and he disavows an unwillingness to come to a satisfactory, provided it be an honourable accommodation. His objection is, the very indefinite grounds which Colonel Burr has assumed, in which he is sorry to be able to discern nothing short of predetermined hostility. Presuming, therefore, that it will be adhered to, he has instructed me to receive the message which you have it in charge to deliver. For this purpose I shall be at home, and at your command, to-morrow morning from eight to ten o'clock.

I have the honour to be,

Respectfully, your obedient servant,

NATHANIEL PENDLETON.

WM. P. VAN NESS, Esq.

SIR—The letter which I had the honour to receive from you, under date of yesterday, states, among other things, that in General Hamilton's opinion, Colonel Burr has taken a very indefinite ground, in which he evinces nothing short of predetermined hostility, and that General Hamilton thinks it inadmissible that the inquiry should extend to his confidential as well as other conversation. In this, Colonel Burr can only reply, that secret whispers, traducing his fame, and impeaching his honour, are, at least, equally injurious with slanders publicly uttered ; that General Hamilton had, at no time, and in no place, a right to use any such injurious expression ; and that the partial negative he is disposed to give, with the reservations he wishes to make, are proofs that he has done the injury specified.

Colonel Burr's request was, in the first instance, proposed in a form the most simple, in order that General Hamilton might give to the affair that course to which he might be induced by his temper and his knowledge of facts. Colonel Burr trusted with confidence, that from the frankness of a soldier and the candour of a gentleman, he might expect an ingenuous declaration ; that if, as he had reason to believe, General Hamilton had used expressions derogatory to his honour, he would have the magnanimity to retract them ; and that if, from his language, injurious inferences had been improperly drawn, he would have perceived the propriety of correcting errors, which might have been thus widely diffused. With these impressions, Colonel Burr was greatly surprised at receiving a letter which he considered as evasive, and which, in manner, he deemed not altogether decorous.

In one expectation, however, he was not wholly deceived, for the close of General Hamilton's letter contained an intimation that if Colonel Burr should dislike his refusal to acknowledge or deny, he was ready to meet the consequences. This Colonel Burr deemed a sort of defiance, and would have felt justified in making it the basis of an immediate message. But as the communication contained something concerning the indefiniteness of the request; as he believed it rather the offspring of false pride than of reflection; and as he felt the utmost reluctance to proceed to extremities while any other hope remained, his request was repeated in terms more explicit. The replies and propositions, on the part of General Hamilton, have, in Colonel Burr's opinion, been constantly in substance the same.

Colonel Burr disavows all motives of predetermined hostility, a charge by which he thinks insult is added to injury. He feels as a gentleman should feel when his honour is impeached or assailed; and without sensations of hostility or wishes of revenge, he is determined to vindicate that honour at such hazard as the nature of the case demands.

The length to which this correspondence has extended, only tending to prove that the satisfactory redress, earnestly desired, cannot be obtained, he deems it useless to offer any proposition except the simple message which I shall now have the honour to deliver.

I have the honour to be, with

Great respect, your obedient servant,

W. P. VAN NESS.

Wednesday morning, June 27, 1804.

“ With this letter a message was received, such as was to be expected, containing an invitation which was accepted, and Mr. Pendleton informed Mr. Van Ness he should hear from him next day as to further particulars.

“ On Friday, the 6th of July, the circuit being closed, Mr. Pendleton informed Mr. Van Ness that General Hamilton would be ready at any time after the Sunday following. On Monday, the particulars were arranged. On Wednesday, the parties met at Weehawk, on the Jersey shore, at 7 o'clock, A. M. The particulars of what then took place will appear from the following statement, as agreed upon and corrected by the seconds of the parties.

“ Colonel Burr arrived first on the ground, as had been previously agreed. When General Hamilton arrived, the parties exchanged salutations, and the seconds proceeded to make their arrangements. They measured the distance, ten full paces, and cast lots for the choice of position, as also to determine by whom the word should be given, both of which fell to the second of General Hamilton. The gentleman who was to give the word, then explained to the parties the rules which were to govern them in firing, which were as follows: ‘ The parties being placed at their stations, shall present and fire *when they please*. If one fires before the other, the opposite second shall say one, two, three, fire, and he shall then fire or lose his fire.’ He then asked if they were prepared; being answered in the affirmative, he gave the word *present*, as had been agreed on, and both parties presented and fired in succession. The intervening time is not expressed, as the seconds do not precisely agree

on that point. The fire of Colonel Burr took effect, and General Hamilton almost instantly fell. Colonel Burr then advanced toward General Hamilton, with a manner and gesture that appeared to General Hamilton's friends to be expressive of regret, but, without speaking, turned about and withdrew, being urged from the field by his friend, as has been subsequently stated, with a view to prevent his being recognised by the surgeon and bargemen, who were then approaching. No further communication took place between the principals, and the barge that carried Colonel Burr immediately returned to the city. We conceive it proper to add, that the conduct of the parties in this interview, was perfectly proper, as suited the occasion."

Soon as the duel had been fought, Colonel Burr journeyed leisurely onward to the south, as if nothing had happened to him or his fortunes. But he every where expressed a regret that he should have been placed in such a situation, particularly with a man for whose talents he had no small share of respect, and towards whom he cherished no enmities of any kind. But he would not consent to be tamely assailed, whatever might be the consequences. Colonel Burr wrote to Dr. Hosack, the distinguished physician and surgeon, who was near the battle-field, to render his services to whoever might be unfortunate, inquiring of him the extent of the wound. This fact I have lately discovered, and on application to Dr. Hosack have been favoured with a copy of the note.

"Mr. Burr's respectful compliments.—He requests Dr. Hosack to inform him of the present state of Ge-

neral H., and of the hopes which are entertained of his recovery.

“Mr. Burr begs to know at what hour of the day the Dr. may most probably be found at home, that he may repeat his inquiries. He would take it very kind if the Dr. would take the trouble of calling on him as he returns from Mr. Bayard’s.

“Thursday, 13th of July.”

There is not a candid man now living who will say that this affair of honour was followed by the ordinary consequences of a duel. In previous cases no notice had been taken of the event by the grand jury, or jury of inquest, or, if the facts came before them, there was no trial had of the supposed surviving party; but in this case a jury of inquest was called, which sat several days after the remains of Hamilton had gone to the tomb, and at last were reluctantly dragooned into a return of murder. This was followed up by an indictment by the grand jury; but they did not venture to pursue the object of their resentments. He journeyed until the meeting of congress in the autumn, and then took his seat as president of the senate, exhibiting the same composure and firmness of nerve that he had always shown in that body.

Colonel Burr took his leave of the senate in a very impressive address. It has been stated by those who were present on this occasion, that no speech they ever heard was superior to it. As he seldom, or never, wrote any thing he uttered in camp, court, or legislative hall, I must take the best report of the speech I can find, which is—

From the Monthly Register and Review of the United States.

The valedictory address to the senate, of Mr. Burr, the late vice president, pronounced on the second of this month, is represented as having been one of the most dignified, sublime and impressive pieces of eloquence ever uttered in a public assembly. It is not, however, for its eloquence, but it is because it contains some observations upon the expediency of a strict attention to rule and decorum in public proceedings, so true, and so wise, as to deserve being kept in mind by all good citizens, that it is put upon record in this work. The strict correctness of the report is not here vouched for, but it is likely that there is no very material error in it, since it seems to have received pretty general assent.

Mr. Burr began by saying, that he had intended to pass the day with them ; but the increase of a slight indisposition, (sore throat,) had determined him, then, to take his leave of them. He touched lightly on some of the rules and orders of the house, and recommended, in one or two points, alterations, of which he briefly explained the reasons and principles.

He then said, he was sensible that he must, at times, have wounded the feelings of individual members. He had ever avoided entering into any explanation at the time, because a moment of irritation was not the moment of explanation ; because his situation (being in the chair) rendered it impossible to enter into explanations without obvious danger of consequences, which might hazard the dignity of the senate, or prove disagreeable and injurious in more than one point of view ; that he had, therefore, preferred to leave to their

reflections his justification ; that on his part he had no injuries to complain of ; if any had been done or attempted, he was ignorant of the authors, and if he had ever heard he had forgotten ; for he thanked *God* he had no memory for injuries. He doubted not but that they had found occasion to observe, that to be prompt, was not, therefore, to be precipitate ; and to act without delay, was not always to act without reflection ; that error was often to be preferred to indecision ; that his errors, whatever they might have been, were those of rule and principle, and not of caprice ; that it could not be deemed ignorance in him to say, that in his official conduct, he had known no party, no cause, no friend ; that if, in the opinion of any, the discipline which had been established approached to rigour, they would, at least, admit that it was uniform and indiscriminate.

He further remarked, that the ignorant and unthinking affected to treat as unnecessary and fastidious, a rigid attention to rules and decorum ; but he thought nothing trivial which touched, however remotely, the dignity of that body : he appealed to their experience for the justice of this sentiment, and urged them, in language the most impressive, and in a manner the most commanding, to avoid the smallest relaxation of the habits which he had endeavoured to inculcate and establish.

But he challenged their attention to considerations more momentous than any which regarded merely personal honour and character, the observation of the law, of liberty, and the constitution. This house, said he, is a sanctuary, and a citadel of law, of order, of liberty ; and it is here, it is here, in this exalted re-

fuge, here, if any where, will resistance be made to the storms of popular frenzy, and the silent arts of corruption; and if the constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, (which *God* avert,) its expiring agonies will be witnessed on this floor.

He then adverted to those afflicting sensations which attended a final separation; a dissolution, perhaps, for ever, of those associations which he hoped had been mutually satisfactory. He consoled himself, however, and them, with the reflections that, though separated, they would be engaged in the common cause of disseminating principles of freedom and social order. He should always regard the proceedings of that body with interest and with solicitude. He should feel for their honour, and the national honour, so intimately connected with it; and he took his leave with impressions of personal respect, and with prayers and wishes, &c.

As the trial of Colonel Burr, for treason against the United States, is one of the most extraordinary on the records of criminal jurisprudence, it would be singular if I were to pass it over without giving the reader some brief history of the affair. At the close of the session of congress, in the spring of 1805, he set out on a journey to the western states, on a private enterprise, as was stated and believed by General Wilkinson, in his own defence before a court martial in 1811. As it is well known that Colonel Burr was arrested and tried on information given by General Wilkinson, his explanation of the account, as far as it relates to facts, must be taken as true, as far as they go. General

Wilkinson says, that he received a letter from Colonel Burr, dated on the 5th of April, 1805, relating to a scheme of a canal at the falls of the Ohio; that, in answer to this, Colonel Burr complained that Wilkinson had written in cipher, as it was with difficulty that he could make it out. General Wilkinson, in his defence, goes on to show, by Captain Peters' letter, that Colonel Burr had a serious intention of cutting the canal. On the 30th of July, 1805, Colonel Burr, after he had left New-Orleans, wrote again to General Wilkinson. These letters were written in a plain and open, free manner, as represented by General Wilkinson, and as appears by examining them. On the 10th of September following, Colonel Burr visited General Wilkinson, and had much conversation with him. On the 19th of the same month, Wilkinson wrote to a friend to Colonel Burr, while the latter had returned to the Atlantic states, and was spending the winter months in Philadelphia. The letter written by General Wilkinson, related to some plan of his to get Colonel Burr elected as delegate from some of the western territories, in order that he might, by his talents and eloquence, wield the councils of the nation. Nothing escaped from Colonel Burr on this subject; Wilkinson alone talks of it. It might have been Colonel Burr's plan to get into congress. Wilkinson wrote again in January, 1806, and also again on April 6th. Up to this time, he seems not for a moment to have suspected that Colonel Burr had any thing in view but private enterprise, or, at most, to make some preparation for taking an active part in the army, if war should be declared by the United States against Spain. This event was expected by all the poli-

ticians of the day. The first blow, if war had been declared, would have, perhaps, been decisive. Soon after this last letter, General Wilkinson saw that the public were watching his movements, and that intimations of his being in the pay of Spain were often made in the newspapers, and that his situation was becoming critical, made a bold attempt to throw the whole odium on the shoulders of Colonel Burr, who had then lost much of his political popularity in the Atlantic states ; but as it seldom happens in society, his reputation for exalted talents and unbounded power seemed to increase as his popularity declined. Wilkinson saw that he was only to attribute vast plans and treasonable purpose to Colonel Burr, and the world would in general believe him without proof. They thought, or were easily brought to believe, that nothing short of empire would satisfy his ambition. He knew also, that Mr. Jefferson was naturally a timid man when arms or blood was mentioned, and that he could easily disturb his nerves by suggestions of a warlike conspiracy.

Having made up his mind what course to pursue, he wrote to President Jefferson on the 20th and 21st of October, 1806. From this time the newspapers were filled with the subject of conspiracies on the western waters, until the 27th of November following, when the president's proclamation was issued. It contained a statement that it had been represented to him that such a state of affairs existed in the western country that the interference of the executive of the United States was required. Although the proclamation was full of denunciations against treason, with strong appeals to a sense of duty and patriotism,

not a place where it existed is named, nor a single person charged with any manner of crime. It was general, calling on all magistrates, ministerial or military officers, to suppress insurrections, and to apprehend those engaged in acts of treason or misdemeanour against the peace and dignity of the United States, that they might be brought to condign punishment. The whole proclamation was aimed against Colonel Burr alone. These statesmen had moved on in harmony together, until the election of president and vice president in 1801, when Colonel Burr was the rival of Mr. Jefferson, as we have before detailed in these memoirs. This was a mortal offence, and was not forgiven by the philosopher of Monticello. An opportunity was now offered to show his ardent patriotism, and to destroy a rival. Fearing the civil authority would not act with sufficient pliancy to the purposes of the executive, the military were armed with extraordinary powers to apprehend Colonel Burr, and to bring him to Virginia for trial. Blannerhasset's island, on the Ohio, happened to be within the limits of Wood county in this commonwealth, and there it was hoped that something like an overt act of treason or of a misdemeanour, would be proved.

On the 19th of February, 1807, Colonel Burr was arrested by a military force on the Tombigbee river, and brought to Richmond, in Virginia, on the evening of the 26th of March, and remained under guard until the 30th, when he was delivered over to the civil authorities.* "Between the hours of twelve and one,

* See Appendix.

(says the trial,) Major Scott, the marshal of the district of Virginia, attended by two of his deputies, waited on Colonel Burr, at his lodgings, at the Eagle tavern, and informed him, in the most respectful manner, of the nature and object of his visit, conducted him through an awfully silent and attentive assemblage of citizens, to a retired room in the house, where he was brought before Chief Justice Marshall for examination. The counsel and a witness for the United States, the counsel for the prisoner, the marshal and his deputies, and a few friends invited by the counsel of Colonel Burr, were alone admitted. This was not satisfactory to the good citizens of Richmond, and, after a short time, the court adjourned to the capitol. The counsel for the United States, Mr. Hay, adduced his testimony. It consisted of the copy of the record in the case of Bollman and Swartwout; also, the affidavits of General Eaton and General Wilkinson, and some others. Major Perkins stated verbally the manner of the arrest of Colonel Burr. It was done by the assistance of soldiers from Fort Stoddart. Perkins acknowledged, that in South Carolina, Colonel Burr applied to several persons, whom he saw standing by a tavern, for a civil magistrate; but that he hurried him on as quick as possible. This evidence being offered, Mr. Hay submitted to the chief justice a motion, in writing, for the commitment of the prisoner on the two charges above mentioned. A discussion took place, on the 31st of March, 1807, before the chief justice. The counsel for the prosecution were Cæsar Augustus Rodney, attorney general of the United States, and George Hay, attorney of the United States for the district of Virginia. The counsel for Colonel

Burr, were Edmund Randolph and John Wickham. As the crowd increased, the chief justice adjourned the court to the hall of the house of delegates. Every one was eager to catch every word that fell from court or counsel, the whole scene was so novel and astounding. "Mr. Hay moved that the prisoner should be committed, in order to take his trial, in two charges exhibited against him on the part of the United States. First, for a high misdemeanour, in setting on foot, within the United States, a military expedition against the dominions of the king of Spain, a foreign prince, with whom the United States, at the time of the offence, were, and still are, at peace. Second, for treason, in assembling an armed force, with a design to seize the city of New-Orleans, to revolutionize the territory attached to it, and to separate the Atlantic from the western states.

"He stated the first offence to be a violation of the fifth section of an act of Congress, passed on the 5th of June, 1794, entitled, 'an act in addition to the act for the punishment of certain crimes against the United States,' continued for limited periods, by several succeeding laws, and continued without limitation by an act passed in 1799." He attempted to support the charge by the letter of Colonel Burr to General Wilkinson, and insisted that it showed probable cause to suspect him of the offence. This attack was nothing but declamation, prompted by executive influence. Mr. Wickham and Mr. Randolph both replied to these denunciations, stated the circumstances of the case, and insisted that there was not a shadow of evidence as to the alleged treason, and but few trivial circumstances of any thing beside. Colonel Burr, who here-

tofore had been quiet, now undertook to make a few remarks to the court. No man, at any time or place, was ever listened to with more profound attention. His fame as a warrior in youth, his reputation at the bar, his eloquence in the halls of legislation, in the state of New-York, and in the senate of the United States, his dignity as presiding officer in that august body, as well as the stories told of him at that moment, as having transpired on his journey of 1200 miles through a wilderness, all created the most intense interest. His audience was, at that moment, a mercurial, high spirited people, who took sides on the question with great zeal and profound feeling. Colonel Burr was then only forty-eight years of age, of a most interesting personal appearance, not having lost a particle of his energies of body or mind. His voice had, by its distinctness and accuracy of pronunciation, an extent and command through a large audience. But the most singular circumstance, was his entire self-possession. In these observations, and through the whole trial, he never, for a moment, forgot his composure or equanimity, nor even uttered, in every form of indignity which the creatures of power attempted to heap upon him, one high raised note, one angry tone, or harsh expression.

Colonel Burr rose, he said, not to remedy any omission of his counsel, who had done great justice to the subject. He wished only to state a few facts, and to repel some observations of a personal nature. The present inquiry involved a simple question of treason or misdemeanour. According to the constitution, treason consisted in acts; that an arrest could only be justified by the suspicions of acts, whereas, in this case,

his honour was invited to issue a warrant upon mere conjecture; that alarms existed without cause; that Mr. Wilkinson alarmed the president, and the president alarmed the people of Ohio. He appealed to historical facts. No sooner did he understand that suspicions were entertained in Kentucky of the nature and design of his movements, than he hastened to meet an investigation. The prosecution not being prepared, he was discharged. That he then went to Tennessee. While there he heard that the attorney for the district of Kentucky was preparing another prosecution against him; that he immediately returned to Frankfort, presented himself before the court, and again was honourably discharged; that what happened in the Mississippi territory was equally well known; that there he was not only acquitted by the grand jury, but they went farther, and censured the conduct of that government; and if there had been really any cause of alarm, it must have been felt by the people of that part of the country; that the manner of his descent down the river, was a fact which put at defiance all rumours about treason or misdemeanour; that the nature of his equipments clearly evinced that his object was purely peaceable and agricultural; that this fact alone ought to overthrow the testimony against him; that his designs were honourable, and would have been useful to the United States. His flight, as it was termed, had been mentioned as evidence of guilt. He asked, at what time did he fly? In Kentucky he invited inquiry, and that inquiry terminated in a firm conviction of his innocence; that the alarms were at first great in the Mississippi territory, and orders had been issued to seize and destroy the persons and pro-

perty of himself and party ; that he endeavoured to undeceive the people, and convince them that he had no designs hostile to the United States, but that twelve hundred men were in arms for a purpose not yet developed ; the people could not be deceived ; and he was acquitted, and promised the protection of the government ; but the promise could not be performed ; the arm of military power could not be resisted ; that he knew there were military orders to seize his person and property, and transport him to a distance from that place ; that he was assured by the officer of an armed boat, that it was lying in the river ready to receive him on board. Was it his duty to remain there thus situated ? That he took the advice of his best friends, pursued the dictates of his own judgment, and abandoned a country where the laws ceased to be the sovereign power ; that the charge stated in a hand-bill, that he had forfeited his recognisance, was false ; that he had forfeited no recognisance ; if he had forfeited any recognisance, he asked, why no proceedings had taken place for the breach of it ? If he was to be prosecuted for such breach, he wished to know why he was brought to this place ? Why not carry him to the place where the breach happened ? That more than three months had elapsed since the order of government had issued to seize and bring him to that place ; yet it was pretended, that sufficient time had not been allowed to adduce testimony in support of the prosecution. He asked, why the guard who conducted him to that place, avoided every magistrate on the way, unless from a conviction that they were acting without lawful authority ? Why had he been debarred the use of pen, ink, and paper, and not even

permitted to write to his daughter ? That in the state of South Carolina, where he happened to see three men together, he demanded the interposition of the civil authority ; that it was from military despotism, from the tyranny of a military escort, that he wished to be delivered, not from an investigation into his conduct, or from the operation of the laws of his country. He concluded, that there were three courses that might be pursued,—an acquittal, or a commitment for treason, or for a misdemeanour ; that no proof existed in support of either, but what was contained in the affidavits of Eaton and Wilkinson, abounding in crudities and absurdities.

Mr. Hay followed Mr. Rodney, but his argument was principally confined to the question of bail. “ He observed, that if the judge should be of opinion that the prisoner ought to be admitted to be put on his trial, and that he might be admitted to bail, he wished to make some observations on the amount of the sum in which the recognisance should be taken.” He acknowledged that it was discretionary with the judge as for what offence he should be tried, for treason or misdemeanour, or whether he should be admitted to bail or not. The chief justice answered, that he certainly would give him an opportunity to make all the observations he desired, and that he intended to deliver his own opinion in writing, to prevent any misrepresentations of expressions which might fall from him.

On Wednesday, April 1, 1807, the chief justice delivered his opinion, in the presence of a numerous audience :

I am required on the part of the attorney for the United States to commit the accused, on two charges :

1st. For setting on foot and providing the means for an expedition against the territories of a nation at peace with the United States.

2d. For committing high treason against the United States.

On an application of this kind I certainly should not require that proof which would be necessary to convict the person to be committed, on a trial in chief; nor should I even require that which should absolutely convince my own mind of the guilt of the accused: but I ought to require, and I should require, that probable cause be shown; and I understand probable cause to be a case made out by proof furnishing good reason to believe that the crime alleged has been committed by the person charged with having committed it.

I think this opinion entirely reconcileable with that quoted from judge Blackstone. When that learned and accurate commentator says, that "if upon an inquiry it manifestly appears that no such crime has been committed, or that the suspicion entertained of the prisoner was wholly groundless, in such cases only it is lawful totally to discharge him, otherwise he must be committed to prison, or give bail." I do not understand him as meaning to say, that the hand of malignity may grasp any individual against whom its hate may be directed, or whom it may capriciously seize, charge him with some secret crime, and put him on the proof of his innocence.* But I understand that the foundation of the proceeding must be a probable

* The chief justice explicitly stated to the reporters, that, in making the above observations, he had no allusion to the conduct of the government

cause to believe there is guilt ; which probable cause is only to be done away in the manner stated by Blackstone. The total failure of proof on the part of the accuser would be considered by that writer as being in itself a legal manifestation of the innocence of the accused.

In inquiring, therefore, into the charges exhibited against Aaron Burr, I hold myself bound to consider how far those charges are supported by probable cause.

The first charge stands upon the testimony of General Eaton and General Wilkinson.

The witness first named proves, that, among other projects which were more criminal, Colonel Burr meditated an expedition against the Mexican dominions of Spain. This deposition may be considered as introductory to the affidavit of General Wilkinson, and as explanatory of the objects of any military preparations which may have been made.

I proceed, then, to that affidavit.

To make the testimony of General Wilkinson bear on Colonel Burr, it is necessary to consider as genuine the letter stated by the former to be, as nearly as he can make it, an interpretation of one received in cipher from the latter. Exclude this letter, and nothing remains in the testimony which can, in the most remote degree, affect Colonel Burr. That there are to the admissibility of this part of the affidavit great and

in the case before him, but only meant an elucidation of the general doctrine laid down by Blackstone. He was induced, he said, to make these remarks, because it had been suggested to him by a friend, after he had delivered his opinion, that his meaning in the above expressions might possibly be misapprehended.

obvious objections, need not be stated to those who know with how much caution proceedings in criminal cases ought to be instituted, and who know that the highest tribunal of the United States has been divided on them. When this question came before the supreme court, I felt the full force of these objections, although I did not yield to them. On weighing in my own mind the reasons for and against acting, in this stage of the business, on that part of the affidavit, those in favour of doing so appeared to me to preponderate, and, as this opinion was not overruled, I hold myself still at liberty to conform to it.

That the original letter, or a true copy of it accompanied by the cipher, would have been much more satisfactory, is not to be denied ; but I thought, and I still think, that upon a mere question whether the accused shall be brought to trial or not, upon an inquiry, not into guilt, but into the probable cause, the omission of a circumstance which is indeed important, but which does not disprove the positive allegations of an affidavit, ought not to induce its rejection, or its absolute disbelief, when the maker of the affidavit is at too great a distance to repair the fault. I could not, in this stage of the prosecution, absolutely discredit the affidavit, because the material facts alleged may very well be within the knowledge of the witness, although he has failed to state explicitly all the means by which this knowledge is obtained.

Thus, General Wilkinson states that this letter was received from Colonel Burr, but does not say that it was in his hand-writing, nor does he state the evidence which supports this affirmation. But, in addition to the circumstance that the positive assertion of

the fact ought not, perhaps, in this stage of the inquiry, to be disregarded, the nature of the case furnishes that evidence.

The letter was in cipher. General Wilkinson, it is true, does not say, that a cipher had been previously settled between Colonel Burr and himself, in which they might correspond on subjects which, though innocent, neither of them might wish to subject to the casualties of a transportation from the Atlantic to the Mississippi; but when we perceive that Colonel Burr has written in cipher, and that General Wilkinson is able to decipher the letter, we must either presume that the bearer of the letter was also the bearer of its key, or that the key was previously in possession of the person to whom the letter was addressed. In stating particularly the circumstances attending the delivery of this letter, General Wilkinson does not say that it was accompanied by the key, or that he felt any surprise at its being in cipher. For this reason, as well as because there is not much more security in sending a letter in cipher accompanied by its key, than there is in sending a letter not in cipher, I think it more reasonable to suppose that the key was previously in possession of Wilkinson. If this was the fact, the letter being written in a cipher previously settled between himself and Colonel Burr, is, in this stage of the inquiry at least, a circumstance which sufficiently supports the assertion, that the letter was written by Colonel Burr.

The enterprise described in this letter is obviously a military enterprise, and must have been intended either against the United States, or against the territories of

some other power on the continent, with all of whom the United States were at peace.

The expressions of this letter must be admitted to furnish at least probable cause for believing, that the means for the expedition were provided. In every part of it, we find declarations indicating that he was providing the means for the expedition ; and as these means might be provided in secret, I do not think that further testimony ought to be required to satisfy me, that there is probable cause for committing the prisoner on this charge.

Since it will be entirely in the power of the attorney general to prefer an indictment against the prisoner, for any other offence which he shall think himself possessed of testimony to support, it is, in fact, immaterial whether the second charge be expressed in the warrant of commitment or not : but as I hold it to be my duty to insert every charge alleged on the part of the United States, in support of which probable cause is shown, and to insert none in support of which probable cause is not shown, I am bound to proceed in the inquiry.

The second charge exhibited against the prisoner, is high treason against the United States, in levying war against them.

As this is the most atrocious offence which can be committed against the political body, so is it the charge which is most capable of being employed as the instrument of those malignant and vindictive passions which may rage in the bosoms of contending parties struggling for power. It is that of which the people of America have been most jealous, and therefore, while

other crimes are unnoticed, they have refused to trust the national legislature with the definition of this, but have themselves declared in their constitution that "it shall consist only in levying war against the United States, or in adhering to their enemies, giving them aid and comfort." This high crime consists of overt acts which must be proved by two witnesses, or by the confession of the party in open court.

Under the control of this constitutional regulation, I am to inquire whether the testimony laid before me furnishes probable cause in support of this charge. The charge is, that the fact itself has been committed, and the testimony to support it must furnish probable cause for believing that it has been actually committed, or it is insufficient for the purpose for which it is adduced.

Upon this point, too, the testimony of General Eaton is first to be considered. That part of his deposition which bears upon this charge is the plan disclosed by the prisoner for seizing upon New-Orleans, and revolutionizing the western states.

That this plan, if consummated by overt acts, would amount to treason, no man will controvert. But it is equally clear, that an intention to commit treason is an offence entirely distinct from the actual commission of that crime. War can only be levied by the employment of actual force. Troops must be embodied, men must be assembled, in order to levy war. If Colonel Burr had been apprehended on making these communications to General Eaton, could it have been alleged that he had gone further than to meditate the crime? Could it have been said that he had actually collected forces, and had actually levied war? Most certainly

it could not. The crime really completed was a conspiracy to commit treason, not an actual commission of treason.

If these communications were not treason at the instant they were made, no lapse of time can make them so. They are not in themselves acts. They may serve to explain the intention with which acts were committed, but they cannot supply those acts, if they be not proved.

The next testimony is the deposition of General Wilkinson, which consists of the letter already noticed, and of the communications made by the bearer of that letter.

This letter has already been considered by the supreme court of the United States, and has been declared to import, taken by itself or in connexion with Eaton's deposition, rather an expedition against the territories of the United States. By that decision I am bound, whether I concurred in it or not. But I did concur in it. On this point the court was unanimous.

It is, however, urged, that the declarations of Swartwout may be connected with the letter, and used against Colonel Burr. Although the confession of one man cannot criminate another, yet I am inclined to think that, on a mere inquiry into probable cause, the declaration of Swartwout made on this particular occasion, may be used against Colonel Burr. My reason for thinking so is, that Colonel Burr's letter authorizes Mr. Swartwout to speak in his name. He empowers Mr. Swartwout to make to General Wilkinson verbal communications, explanatory of the plans and designs of Burr, which Burr adopts as his own explanations.

However inadmissible, therefore, this testimony may be on a trial in chief, I am inclined to admit it on this inquiry.

If it be admitted, what is its amount? Upon this point, too, it appears that the supreme court was divided. I therefore hold myself at liberty to pursue my own opinion, which was, that the words "this territory must be revolutionized," did not so clearly apply to a foreign territory as to reject that sense which would make them applicable to a territory of the United States, at least so far as to admit of further inquiry into their meaning. And if a territory of the United States was to be revolutionized, though only as a mean for an expedition against a foreign power, the act would be treason.

This reasoning leads to the conclusion that there is probable cause for the allegation that treasonable designs were entertained by the prisoner so late as July last, when this letter was written.

It remains to inquire whether there is also probable cause to believe, that these designs have been ripened into the crime itself by actually levying war against the United States.

It has been already observed, that to constitute this crime, troops must be embodied, men must be actually assembled; and these are facts which cannot remain invisible. Treason may be machinated in secret, but it can be perpetrated only in open day, and in the eye of the world. Testimony of a fact which in its own nature is so notorious ought to be unequivocal. The testimony now offered has been laid before the supreme court of the United States, and has been determined in the cases of Ballman and Swartwout, not to

furnish probable cause for the opinion that war had been actually levied. Whatever might have been the inclination of my own mind in that case, I should feel much difficulty in departing from the decision then made, unless this case could be clearly distinguished from it. I will, however, briefly review the arguments which have been urged, and the facts now before me, in order to show more clearly the particular operation they have on my own judgment.

The fact to be established is, that in pursuance of these designs previously entertained, men have been actually assembled for the purpose of making war against the United States; and on the showing of probable cause that this fact has been committed, depends the issue of the present inquiry.

The first piece of testimony relied on to render this fact probable, is the declaration of Mr. Swartwout, that "Colonel Burr was *levying* an armed body of 7000 men, from the state of New-York and the western states and territories, with a view to carry an expedition against the Mexican provinces." The term "*levying*" has been said, according to the explanation of the lexicons, to mean the embodying of troops, and therefore to prove what is required. Although I do not suppose that Mr. Swartwout had consulted a dictionary, I have looked into Johnson for the term, and find its first signification to be "to raise," its second "to bring together." In common parlance, it may signify the one or the other. But its sense is certainly decided by the fact. If, when Mr. Swartwout left Colonel Burr, which must be supposed to have been in July, he was actually embodying men from New-York to the western states, what could veil his troops

from human sight? An invisible army is not the instrument of war, and had these troops been visible, some testimony relative to them could have been adduced. I take the real sense then in which this term was used to be, that Colonel Burr was raising, or, in other words, engaging or enlisting men through the country described, for the enterprise he meditated. The utmost point to which this testimony can be extended is, that it denotes a future embodying of men, which is more particularly mentioned in the letter itself, and that it affords probable cause to believe that the troops did actually embody at the period designated for their assembling, which is sufficient to induce the justice to whom the application is made to commit for trial.

I shall readily avow my opinion, that the strength of the presumption arising from this testimony ought to depend greatly on the time at which the application is made. If soon after the period at which the troops were to assemble, when full time had not elapsed to ascertain the fact, these circumstances had been urged as the ground for a commitment on the charge of treason, I should have thought them entitled to great consideration. I will not deny, that in the cases of Bollman and Swartwout, I was not perfectly satisfied that they did not warrant an inquiry into the fact. But I think every person must admit that the weight of these circumstances daily diminishes. Suspicion may deserve great attention, when the means of ascertaining its real grounds are not yet possessed ; but when those means are or may have been acquired, if facts to support suspicion be not shown, every person, I think, must admit, that the ministers of justice, at least,

ought not officially to entertain it. This, I think, must be conceded by all; but whether it be conceded by others or not, it is the dictate of my own judgment, and in the performance of my duty I can know no other guide.

The fact to be proved, in this case, is an act of public notoriety. It must exist in the view of the world, or it cannot exist at all. The assembling of forces to levy war is a visible transaction, and numbers must witness it. It is, therefore, capable of proof; and when time to collect this proof has been given, it ought to be adduced, or suspicion becomes ground too weak to stand upon.

Several months have elapsed since this fact did occur, if it ever occurred. More than five weeks have elapsed since the opinion of the supreme court has declared the necessity of proving the fact, if it exists. Why is it not proved?

To the executive government is intrusted the important power of prosecuting those whose crimes may disturb the public repose, or endanger its safety. It would be easy, in much less time than has intervened since Colonel Burr has been alleged to have assembled his troops, to procure affidavits establishing the fact. If, in November or December last, a body of troops had been assembled on the Ohio, it is impossible to suppose that affidavits establishing the fact could not have been obtained by the last of March. I ought not to believe that there has been any remissness on the part of those who prosecute, on this important and interesting subject; and, consequently, when at this late period no evidence that troops have been actually embodied is given, I must say, that the suspicion,

which in the first instance might have been created, ought not to be continued, unless this want of proof can be in some manner accounted for.

It is stated by the attorney for the United States, that as affidavits can only be voluntary, the difficulty of obtaining them accounts for the absence of proof.

I cannot admit this position. On the evidence furnished by this very transaction of the attachment felt by our western for their eastern brethren, we justly felicitate ourselves. How inconsistent with this fact is the idea, that no man could be found who would voluntarily depose, that a body of troops had actually assembled, whose object must be understood to be hostile to the Union, and whose object was detected and defeated by the very people who could give the requisite information!

I cannot doubt that means to obtain information have been taken on the part of the prosecution; if it existed, I cannot doubt the practicability of obtaining it; and its non-production at this late hour, does not, in my opinion, leave me at liberty to give to those suspicions which grow out of other circumstances that weight to which, at an earlier day, they might have been entitled.

I shall not, therefore, insert in the commitment the charge of high treason. I repeat, that this is the less important, because it detracts nothing from the right of the attorney to prefer an indictment for high treason, should he be furnished with the necessary testimony.

The bail, fixed at ten thousand dollars, was given by

Colonel Burr, and the cause was continued until the 22d day of May then next ensuing.

The court met on the 22d of May, 1807, Chief Justice Marshall and Judge Cyrus Griffin forming the court. The counsel for the prosecution were, Messrs. Hay, district attorney, William Wirt, and Alexander M'Rae. Of counsel for Colonel Burr, Edmund Randolph, John Wickham, Benjamin Botts, and John Baker. The clerk having called the names of the gentlemen summoned on the grand jury, Mr. Burr's counsel demanded a sight of the panel, which was shown to them, when Colonel Burr addressed the court to the following effect :

MAY IT PLEASE THE COURT—Before any further proceeding with regard to swearing the jury, I beg leave to remark some irregularity that has taken place in summoning part of the panel. This is the proper time to make the exception. I understand that the marshal acts not under an act of congress, but a law of the state of Virginia, by which he is required to summon twenty-four freeholders of the state to compose the grand jury. When he has summoned that number, his function is completed. He cannot, on any account, summon a twenty-fifth. If, therefore, it can be made to appear, that the marshal has struck off any part of the original panel, and substituted other persons in their stead, the summons is illegal. Such is the law and the dictate of true policy ; for in important cases, like the present, a different course would produce the most injurious consequences. I consider it proper to ask the marshal and his deputies what persons they have summoned, and at what periods ; whence it may be known, whe-

ther some have not been substituted in place of others struck off the panel. When we have settled this objection, I shall proceed to exceptions of a different nature.

After these observations from the respondent, some discussion took place between the counsel for government and for Colonel Burr, respecting summoning the grand jury, and empaneling the same. Colonel Burr, in discussing the doctrine of challenging said, many of those who were called had prejudged the cause; and in answer to the questions put to them, evinced that they had been overwhelmed with the current prejudices. At length the grand jury were formed and sworn. John Randolph, junior, was appointed foreman, and a charge full of sound doctrine was delivered by Judge Marshall, and the jury sent to their room. Colonel Burr then stated his wish to the court, that the grand jury should be instructed on certain leading points, as to the admissibility of testimony which he supposed might be laid before the grand jury by the attorney for the United States. Mr. Hay replied. Much altercation took place, when the court adjourned unto the 23d of May. On this day the court met; the grand jury were called, and informed by the chief justice, that some delay might arise from the absence of a principal witness, General Wilkinson. The court adjourned to the Monday following.

On the 25th the court met. The grand jury appeared, and their foreman stated, that they had been confined two days to their chambers, and had no presentment to make, or bill before them. Mr. Hay ob-

served that he had two bills prepared, but wished to postpone the delivery of them until witnesses were present, and until it was ascertained that all the evidence relied on by the counsel for the prosecution could be had. He thought it probable, that in the course of a week he should hear of General Wilkinson, who was still absent, and whose testimony he deemed very important. Mr. Hay now observed, that a motion might be made which would render the presence of the witnesses necessary on the day to which they should adjourn. Mr. Wickham requested that before any order should be taken in relation to the adjournment of the grand jury, the counsel for the United States might state the nature and object of his motion. Mr. Hay distinctly replied, that the object of his motion was to commit Mr. Burr on a charge of high treason against the United States. On his examination, there was no evidence of an overt act, and he was committed for a misdemeanour only; the evidence was different now. Some discussion took place on this motion, in which Colonel Burr took a part, and his counsel also. Mr. Wirt, on this motion, made his first speech in the cause. It was long and earnest, and seemed a relief to those of his colleagues.

On Tuesday, the 31st of May, the chief justice delivered his opinion on Mr. Hay's motion to commit Colonel Burr, and the amount of his opinion was, that he was ready to hear the testimony which the attorney for government had to offer in support of his motion. The counsel for and against the prosecution retired, to see if any arrangements could be made to prevent a further discussion on this subject; but after much deliberation, it was found that nothing could be done by

agreement. After some discussion, the court decided that the counsel for the prosecution might bring forward his evidence in any manner he thought proper, but suggested that he had better adduce that which would go to show an overt act, if he had it. Mr. Hay then observed, that he should take up the depositions first, and then the *viva voce* testimony ; that he should begin with General Wilkinson's deposition. The chief justice said, that the supreme court had decided that an affidavit might be admitted under certain circumstances ; but they had also decided, that General Wilkinson's affidavit did not contain any proofs of an overt act ; but he was willing to permit the attorney for the prosecution to pursue his own course, in order to draw out the evidence, believing that he would not waste time. Mr. Hay called Peter Taylor as a witness, (he had been a gardener to Blannerhasset,) and then the affidavit of Jacob Dunbaugh was offered, but objected to by defendant's counsel, and the objection was sustained by the court, in an elaborate argument. The affidavit was defective in form. In this stage of the trial, Luther Martin, the friend of Colonel Burr, appeared as one of his counsel. Colonel Burr, to save all trouble, offered to give bail, provided it was in a reasonable sum. This was accepted. The court adjourned from day to day, General Wilkinson not having arrived, until the 3d of June. When the subject of an adjournment to some distant day was proposed, Colonel Burr objected to this, and observed—That there were manifest inconveniences in the measure proposed. He had, for instance, a number of witnesses here from a distance ; would it not be inconvenient for them to be kept here ? Certainly, how-

ever, they may be detained ; but why an adjournment to a distant day ? Mr. Wilkinson may be expected here every day. The attorney's estimate of the time is not perhaps correct. Perkins came about the same distance as Mr. Wilkinson is to come ; but he performed his journey in thirty-one days. What we want, however, is some data from the government on this subject ; such, for instance, as the time when the express left Washington. As to Minnikin's affidavit, what great reliance can be placed in it ? Did he certainly identify the express ? But suppose that the express reached New-Orleans about the time mentioned ; Mr. Wilkinson may come by water, and is to be expected here every day. Mr. Burr hoped that this measure would not be adopted, particularly as it was uncertain whether eight or ten days hence all of the grand jury would meet here again. Mr. Wilkinson may be near to this place at this moment ; and he may arrive almost immediately after the jury is adjourned. Adjourn them from day to day. According to Mr. Dearborn's letter, Mr. Wilkinson ought to have been here between the 28th and 30th of May ; allowing, however, six days more than he said, Mr. Wilkinson may be expected here to-morrow.

Mr. Hay wished for an adjournment for ten days. After much altercation, the court was adjourned from Wednesday, 3d of June, to Tuesday, the 9th. On the 9th, a further time was asked for, and an adjournment took place until the Thursday following, as General Wilkinson had not arrived.

Colonel Burr then addressed the court. There was a proposition which he wished to submit to them. In the president's communication to congress, he speaks

of a letter and other papers which he had received from Mr. Wilkinson, under date of 21st of October. Circumstances had now rendered it material, that the whole of this letter should be produced in court; and further, it has already appeared to the court, in the course of different examinations, that the government have attempted to infer certain intentions on my part, from certain transactions. It becomes necessary, therefore, that these transactions should be accurately stated. It was, therefore, material to show, in what circumstances I was placed in the Mississippi Territory; and, of course, to obtain certain orders of the army and the navy which were issued respecting me. I have seen the order of the navy in print; and one of the officers of the navy had assured me, that this transcript was correct. The instructions in this order were, to destroy my person and my property in descending the Mississippi. Now, I wish, if possible, to authenticate this statement; and it was for this purpose, when I passed through Washington lately, that I addressed myself to Mr. Robert Smith. That gentleman seemed to admit the propriety of my application, but objected to the course. He informed me, that if I would apply to him through one of my counsel, there could be no difficulty in granting the object of my application. I have since applied in this manner to Mr. Smith, but without success; hence I feel it necessary to resort to the authority of this court, to call upon them to issue a subpœna to the president of the United States, with a clause requiring him to produce certain papers; or in other words, to issue the subpœna *duces tecum*. The attorney for the United States will, however, save the time of this court, if he will

consent to produce the letter of the 21st October, with the accompanying papers, and also authentic orders of the navy and war departments.

This was objected to, and a discussion took place, upon the power of the court to issue a subpœna *duces tecum* ; which was not closed at the adjournment, but resumed the next day, June 10th.

The court met according to adjournment. The subject of the subpœna *duces tecum* was resumed.

The following affidavit, drawn up and sworn to by Colonel Burr, was read in support of the motion for the subpœna :

“ Aaron Burr maketh oath, that he hath great reason to believe, that a letter from General Wilkinson to the president of the United States, dated 21st October, 1806, as mentioned in the president’s message of the 22d January, 1807, to both houses of congress, together with the documents accompanying the said letter, and copy of the answer of said Thomas Jefferson, or of any one by his authority, to the said letter, *may* be material in his defence, in the prosecution against him. And further, that he hath reason to believe, the military and naval orders given by the president of the United States, through the departments of war and of the navy, to the officers of the army and navy, at or near the New-Orleans station, touching or concerning the said Burr, or his property, will also be material in his defence.

“ AARON BURR.

“ Sworn to, in open court, 10th June, 1807. ”

This day was consumed in an argument upon this motion, in which all the counsel on both sides took part. On the 11th the argument was resumed; also on the 12th. On the question of the subpoena *duces tecum*, argued on the 12th, the chief justice remarked, that the affidavit speaks of no answer to General Wilkinson's letter. Colonel Burr said, though I am extremely well satisfied with the arguments of my counsel, as far as they have gone, yet I shall offer a few additional remarks. The counsel for the prosecution are mistaken when they say, that it would be improper to address the subpoena to the president. The public papers are not kept in the department of state, but in the separate departments, according to their nature. There is no official communication between General Wilkinson, as a general or commander in chief, and the president, though there may be as governor of Louisiana. The communications from him as general, are to the department of war. The president's letter does not show where General Wilkinson's letter is deposited. If addressed to him, it continues in his possession. His communication to congress shows that he has it. The course in congress is to apply directly to the president for any papers or documents wanted, and not to the secretaries; because they are all under his control and direction; he can order them to deliver any paper or document in their possession, and they must obey him. Mr. Burr then went more into detail, the substance of which was, that there was no evidence of the commission of treason; that the president, in his communication to congress, and in his proclamation, grounded on General Wilkinson's letter to him of the 21st of October, insinuates nothing of a treasonable

nature ; that in these he states, that an attack on the Spanish colonies was supposed to be intended ; but if there had been any just reason for believing that treason had been committed, the president would certainly have stated it ; that he had been denounced by the highest authority in the country ; that this denunciation had created a general prejudice against him ; that the government ought to furnish all the means in its power to remove the unjust prejudices thus improperly excited against him ; that he asked no privileges but what the laws conferred on every citizen. He demanded these papers, not for the purposes of detraction, as had been unjustly asserted ; but to discover facts tending to prove his own innocence. He denied, in strong terms, having advised or stimulated his counsel to abuse the administration : that, on the contrary, he had charged them to avoid all irritating reflections. He concluded by expressing his hopes, that the motion would be granted ; that if the court made the order, the papers would be obtained without delay ; whereas a previous application for them without such order, if unsuccessful, would produce considerable delay, which he wished very much to avoid ; and that the approach of General Wilkinson required a prompt opinion of the court, to prevent delay.

On the 13th day the chief justice stated that he had drawn up a supplementary charge, which he had submitted to the attorney for the United States, with a request that it should be put into the hands of Colonel Burr's counsel. On this day the chief justice delivered an elaborate opinion on the motion to issue a subpoena *duces tecum*, directed to the president of the

United States. He decided that such a subpoena as is asked ought to issue, if there exist any reason for supposing that the testimony may be material, and ought to be admitted. In this stage of the proceedings Mr. Hay took exceptions to some words that fell from the court. The chief justice treated the subject with his usual courtesy and independence. Dr. Bollman was called, and a pardon for all matters of offence offered him, which he peremptorily refused to accept. Mr. Williams appeared as counsel for Dr. Bollman, and the subject of the effect of an unaccepted pardon was discussed. The question was not decided. The court adjourned to the 15th, when General Wilkinson was sworn, and sent to the grand jury. The day was consumed in discussing the question of sending papers to the grand jury. The court opposed it. On Tuesday, the 16th, Mr. Hay received a letter from President Jefferson, declaring that he had no wish to withhold any necessary papers, and that he would send such as might be specified.

The next subject for discussion, as suggested from the bench, was how far a witness may refuse to answer a question which he thinks would criminate himself; but the counsel seemed to dwell upon the subject of the letter in cipher, in order to settle the fact of its being written by Colonel Burr. The court adjourned. On Wednesday, the 17th, they met again, and a world of learning was lavished upon the same subject, or rather upon no definite one, for, at the close of the day, the chief justice asked if there was any questions before the court, when Mr. M'Rae requested a decision on Dr. Bollman's case. Mr. Williams was ready to discuss the question. Colonel Burr observ-

ed—There will arise some very important questions, affecting the very sources of the jurisprudence of this country. I have several affidavits to produce, to show that improper means have been used to procure witnesses, and thereby contaminate the public justice: when these proofs have been duly exhibited, it will be the province of the court to decide, whether they will not arrest the progress of such improper conduct, and prevent the introduction of such evidence.

After some altercation upon the violation of the post office in obtaining letters, some desultory conversation ensued, when Colonel Burr observed, that he was afraid he was not sufficiently understood, from mingling two distinct propositions together. As to the subject of the post offices, it might rest for the present; but as to the improper means employed in obtaining testimony, they were at this moment in actual operation. Some witnesses had been brought here by this practice; and it was one which ought immediately to be checked: he did not particularly level his observations against General Wilkinson. He did not say, that the attorney for the United States ought to indict, or that such a crime, if committed out of this district, was cognizable by the court, unless it be going on while the court is in session, or the cause depending; in those cases improper practices, relative to crimes committed out of the limits of this court, may be examined, and the persons committing them attached. Such practices have been since I have been recognised here, and they ought to be punished by attachment.

Mr. Wirt.—I do not yet understand the gentlemen. What is the object of their motion?

Mr. Botts.—We shall hereafter make it ; we have no other object by the present annunciation, than to give gentlemen a timely notice of our intentions.

Mr. Burr.—We have sufficient evidence on which to found our motion.

What motion ? demanded Mr. Hay.

Mr. Burr.—I thought, sir, I had sufficiently explained my intentions. I may either move for a rule to show cause why an attachment should not issue against Judge Toulmin, John G. Jackson, and General Wilkinson, or, what is sometimes, though not so frequently practised, I may directly move for an attachment itself.

Mr. M'Rae.—At whose motion ?

Mr. Burr.—At the public's.

Mr. M'Rae.—A pretty proceeding, indeed ! that the public prosecution should thus be taken out of the hands of the public prosecutor, and that the accused should supersede the attorney for the United States !

Mr. Burr.—A strange remark, indeed ! As if it were not the business of the injured person himself to institute the complaint.

Mr. Hay.—I wish for further explanation. Let the specific charge, on which their motion is founded, be clearly pointed out and reduced to writing.

Mr. Burr.—The motion will be for an attachment, for the irregular examination of witnesses, practising on their fears, forcing them to come to this place, and transporting them from New-Orleans to Norfolk. (See Appendix.)

Some sharp conversation took place on this subject.

On the 18th, the chief justice delivered the following opinion on several points discussed.

In point of law, the question now before the court relates to the witness himself. The attorney for the United States offers a paper in cipher, which he supposes to have proceeded from a person against whom he has preferred an indictment for high treason, and another for a misdemeanour, both of which are now before the grand jury; and produces a person, said to be the secretary or clerk of the accused, who is supposed either to have copied this paper by his directions, or to be able to prove, in some other manner, that it has proceeded from his authority. To a question, demanding whether he understands this paper, the witness has declined giving an answer, saying, that the answer might criminate himself; and it is referred to the court to decide, whether the excuse he has offered be sufficient to prevent his answering the question which has been propounded to him.

It is a settled maxim of law, that no man is bound to criminate himself. This maxim forms one exception to the general rule, which declares, that every person is compellable to bear testimony in a court of justice. For the witness, who considers himself as being within this exception, it is alleged, that he is, and from the nature of things must be, the sole judge of the effect of his answer; that he is, consequently, at liberty to refuse to answer any question, if he will say, upon his oath, that his answer to that question might criminate himself.

When this opinion was first suggested, the court conceived the principle laid down at the bar to be too broad, and therefore required, that authorities in support of it might be adduced. Authorities have been

adduced, and have been considered. In all of them, the court could perceive, that an answer to the question propounded might criminate the witness, and he was informed, that he was at liberty to refuse an answer. These cases do not appear to the court to support the principle laid down by the counsel for the witness, in the full latitude in which they have stated it. There is no distinction which takes from the court the right to consider and decide, whether any direct answer to the particular question propounded, could be reasonably supposed to affect the witness. There may be questions, no direct answer to which could, in any degree, affect him ; and there is no case which goes so far as to say, that he is not bound to answer such questions. The case of Goosely, in this court, is, perhaps, the strongest that has been adduced. But the general doctrine of the judge, in that case, must have referred to the circumstances which showed that the answer might criminate him.

When two principles come in conflict with each other, the court must give them both a reasonable construction, so as to preserve them both to a reasonable extent. The principle which entitles the United States to the testimony of every citizen, and the principle by which every witness is privileged not to accuse himself, can neither of them be entirely disregarded. They are believed both to be preserved to a reasonable extent, and according to the true intention of the rule, and of the exception to that rule, by observing that course which, it is conceived, courts have generally observed. It is this :

When a question is propounded, it belongs to the

court to consider and to decide, whether any direct answer to it can implicate the witness. If this be decided in the negative, then he may answer it without violating the privilege which is secured to him by law. If a direct answer to it *may* criminate himself, then he must be the sole judge what his answer would be. The court cannot participate with him in this judgment, because they cannot decide on the effect of his answer without knowing what it would be ; and a disclosure of that fact to the judges would strip him of the privilege which the law allows, and which he claims. It follows necessarily then, from this statement of things, that if the question be of such a description that an answer to it may or may not criminate the witness, according to the purport of that answer, it must rest with himself, who alone can tell what it would be, to answer the question or not. If, in such a case, he say upon his oath, that his answer would criminate himself, the court can demand no other testimony of the fact. If the declaration be untrue, it is in conscience and in law as much a perjury as if he had declared any other untruth upon his oath ; as it is one of those cases in which the rule of law must be abandoned, or the oath of the witness be received.

The counsel for the United States have also laid down this rule according to their understanding of it ; but they appear to the court to have made it as much too narrow as the counsel for the witness have made it too broad. According to their statement, a witness can never refuse to answer any question, unless that answer, unconnected with other testimony, would be sufficient to convict him of a crime. This would be rendering the rule almost perfectly worthless.

Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the court to be the true sense of the rule, that no witness is compellable to furnish any one of them against himself. It is certainly not only a possible but a probable case, that a witness, by disclosing a single fact, may complete the testimony against himself, and, to every effectual purpose, accuse himself as entirely as he would by stating every circumstance which would be required for his conviction. That fact of itself might be unavailing; but all other facts without it would be insufficient. While that remains concealed within his own bosom he is safe; but draw it from thence, and he is exposed to a prosecution. The rule which declares, that no man is compellable to accuse himself, would most obviously be infringed, by compelling a witness to disclose a fact of this description.

What testimony may be possessed, or is attainable, against any individual, the court can never know. It would seem, then, that the court ought never to compel a witness to give an answer, which discloses a fact that would form a necessary and essential part of a crime, which is punishable by the laws.

To apply this reasoning to the particular case under consideration; to know and conceal the treason of another, is misprision of treason, and is punishable by law. No witness, therefore, is compellable by law to disclose a fact which would form a necessary and essential part of this crime. If the letter in question contain evidence of treason, which is a fact not dependent on the testimony of the witness before the court, and, therefore may be proved without the aid of his testi-

mony ; and if the witness were acquainted with that treason when the letter was written, he may probably be guilty of misprision of treason ; and, therefore, the court ought not to compel him to answer any question, the answer to which might disclose his former knowledge of the contents of that letter.

But if the letter should relate to the misdemeanour, and not to the treason, the court is not apprized that a knowledge and concealment of the misdemeanour would expose the witness to any prosecution whatever. On this account, the court was, at first, disposed to inquire, whether the letter could be deciphered, in order to determine from its contents, how far the witness could be examined respecting it. The court was inclined to this course, from considering the question as one which might require a disclosure of the knowledge which the witness might have had of the contents of this letter when it was put in cipher, or when it was copied by himself ; if, indeed, such were the fact. But, on hearing the question more particularly and precisely stated, and finding that it refers only to the present knowledge of the cipher, it appears to the court, that the question may be answered without implicating the witness ; because, his present knowledge would not, it is believed, in a criminal prosecution, justify the inference that his knowledge was acquired previous to this trial, or afford the means of proving that fact.

The court is, therefore, of opinion, that the witness may answer the question now propounded.

The gentlemen of the bar will understand the rule laid down by the court to be this :

It is the province of the court to judge, whether any

direct answer to the question which may be proposed, will furnish evidence against the witness.

If such answer *may* disclose a fact, which forms a necessary and essential link in the chain of testimony, which would be sufficient to convict him of any crime, he is not bound to answer it, so as to furnish matter for that conviction.

In such a case, the witness must himself judge what his answer will be; and if he say, on oath, that he cannot answer without accusing himself, he cannot be compelled to answer.

On the 19th, Colonel Burr made known to the court that he had received only a verbal answer to the subpoena *duces tecum*.

It was not our intention to detail all the proceedings in this trial, nor to epitomize it; but only to give a sufficiency to show how great must have been the struggles of Colonel Burr to defend himself against such an array of power, and how manfully he met the enemy at every step, and how hard they endeavoured to crush him; and also to show how greatly superior he was, in the laws and constitution of his country, to all his opposers. These remarks are made without any bitterness, for time has taken the sting from the wounds which were then festering.

The court continued in session from day to day. Mr. Knox, Lieutenant Gains, and others, were sworn, proving but little more than the fact of a public excitement, and that Lieutenant Gains was made a deputy marshal, to take Colonel Burr under colour of law. The counsel for the prisoner pushed the argument for an attachment on General Wilkinson, for *endeavouring to prevent the free course of testimony*. Mr. Ed-

mund Randolph made a spirited argument on this motion, on the 24th of June. Mr. Wirt made some remarks also, when Mr. Wickham continued the argument in favour of the motion, and was followed by Mr. M'Rae on the other side. He was followed by Mr. Botts for the accused. Mr. Gains was severely handled in their arguments for the accused. While Mr. Botts was going on with the argument the grand jury entered with several indictments, viz.

"An indictment against Aaron Burr, for treason—a true bill."

"An indictment against Aaron Burr, for a misdemeanour—a true bill."

"An indictment against Herman Blannerhasset, for treason—a true bill."

"An indictment against Herman Blannerhasset, for a misdemeanour—a true bill."

The grand jury observed, that they had not finished their business, and stated that they should meet the next day. Mr. Botts continued his argument; and, when it closed, addressed the court upon the subject of bail, alleging, that it was in the power of the court to bail him. The discussion took a wide range, and Colonel Burr, wishing that his trial might go on, waived his motion, and expressed his willingness, for the sake of despatch, to be committed. This was ordered by the court. The question of the right to bail being reserved, Colonel Burr was conducted to the jail. The room he was confined in was the common room where debtors, felons, white, black and gray, were commingled, to the amount of a dozen or two. As he entered this abode, the wretched seemed to think that they were not so miserable as they were considered. No

bed was prepared for him to rest upon. He sent for the jailor, who was absolutely afraid to treat him with civility; but at his request, sent him an old blanket to wrap himself up with; but as to pillow, he made use of a bucket or stick of wood. The inmates of the prison gathered round their new comer, and stood in silence and wonder. He marked out the limits he wished for himself, and charged them not to trespass on them. They did not; but as he laid himself down to rest, they sat in astonishment, that one who had seen all the elegancies of life, and heard the applauses of the world, could so sleep.

Thursday, the 25th of June, Colonel Burr was brought into court by writ of *habeas corpus*, and General Jackson, from Tennessee, and sundry other witnesses, were sworn, and sent to the grand jury. The discussion of the question of attaching James Wilkinson was continued, and kept up with great earnestness, until the grand jury entered the court, and offered the following:

The grand inquest of the United States, for the district of Virginia, upon their oaths present, that Jonathan Dayton, late a senator in the congress of the the United States, from the state of New-Jersey, John Smith, a senator in the congress of the United States, from the state of Ohio, Comfort Tyler, late of the state of New-York, Israel Smith, late of the state of New-York, and Davis Floyd, late of the territory of Indiana, are guilty of treason against the United States, in levying war against the same; to wit, at Blannerhasset's Island, in the county of

Wood, and state of Virginia, on the 13th day of December, 1806,

Upon the information of

William Eaton,	Erick Bollman,
Peter Taylor,	Jacob Allbright,
Charles Willie	John Graham,
Samuel Swartwout,	George Morgan,
John Morgan,	Thomas Morgan,
Elias Glover,	D. Woodbridge, junr.
David C. Wallace,	Edmund B. Dana,
John G. Henderson,	Alexander Henderson.
James Wilkinson,	Hugh Phelps,
Jacob Dubaugh,	John Monholland,
Chandler Lindsley,	James Knox,
William Love,	Thomas Hartley,
Stephen Welch,	James Kinney.
Samuel Moxley,	David Fisk.
Benjamin H. Latrobe,	

JOHN RANDOLPH, Foreman.

The grand jury, continued Mr. Randolph, have no further presentments to make. He then delivered two papers which they had received from the court. The one was a ciphered letter, addressed to H. Winbourn. the other was the letter to Colonel Morgan.

Chief Justice.—Mr. attorney, have you any thing more for the grand jury?

Mr. Hay.—I can have all the indictments ready to be laid before them to-morrow.

Mr. Taylor, (from Norfolk.)—Is it not customary for the attorney to file informations upon these presentments? Is there any necessity for detaining the jury?

Some objection was made.

Mr. Randolph.—May not the bills be laid before another grand jury, as the parties presented are not now in custody?

Mr. Hay.—That course would be productive of great inconvenience. All the witnesses are now here: and they will not, perhaps, appear before another grand jury, and the present jury are already in possession of all the evidence.

Mr. Randolph had hoped that they would be discharged. He was not anxious on his own account, but there was one of the jury peculiarly and delicately situated, who wished to return to his family.

Mr. Taylor observed to the court, that a very afflictive circumstance, of a domestic nature, made him peculiarly anxious to return home.

Mr. Hay was extremely sorry that he could not gratify the wishes of the jury; but the interest of the United States forbade him. He would have the indictments read at any hour in the morning that the jury would name. Nine o'clock was mentioned, and the jury were then adjourned to that hour.

Mr. Wickham addressed the court. Mr. Hay followed; and, in fact, all the counsel took part upon matters and things in general. Colonel Burr wished to stay these arguments, and said, that he acknowledged himself to be the person named in the indictment, and pleaded not guilty to the charge. The counsel on the part of the government evidently wished to stop here. This would not do. The chief justice would not permit it.

On Saturday, June 27, 1807, the chief justice delivered the opinion of the court on the motion for an attachment against General Wilkinson.

The motion now under consideration was heard at this time, because it was alleged to be founded on a fact which might affect the justice of the case in which the court is about to be engaged, and because, while the bills were depending before the grand jury, the court might, without impeding the progress of the business, examine into the complaint which has been made.

The motion is to attach General Wilkinson for a contempt of this court, by obstructing the fair course of justice, with regard to a prosecution depending before it. In support of this charge has been offered the testimony of Mr. Knox, who states a conversation between General Wilkinson and himself, previous to his being served with a subpoena, the object of which was to extract from him whatever information he might possess, respecting the expedition which was the subject of inquiry in this court; and who states, also, that he was afterwards summoned before Judge Hall, who examined him upon interrogatories, and committed him to jail, whence he was taken by order of the deputy marshal, who was a military as well as civil officer, and put on board the *Revenge*, in which General Wilkinson sailed, for the purpose of being brought from New-Orleans to Richmond.

That unfair practices towards a witness who was to give testimony in this court, or oppression under colour of its process, although those practices and that

oppression were acted in another district, would be punishable in the mode now suggested, provided the person who had acted therein came within the jurisdiction of the court, is a position which the court is not disposed to controvert; but it is also believed that this mode of punishment ought not to be adopted, unless the deviation from law could be clearly attached to the person against whom the motion was made, and unless the deviation were intentional, or unless the course of judicial proceeding were or might be so affected by it as to make a punishment in this mode obviously conducive to a fair and correct administration of justice.

The conversation which took place between General Wilkinson and the witness, on the arrival of the latter in New-Orleans, was manifestly held with the intention of drawing from him any information which he might possess, relative to the expedition which was then the subject of inquiry. In this intention there was nothing unlawful. Government and those who represent it, may justifiably and laudably use means to obtain voluntary communications, provided those means be not such as might tempt the person making them to give an improper colouring to his representations, which might afterwards adhere to them, when repeated in court. The address stated to have been employed, the condescension and regard with which the witness was treated, are not said by himself to have been accompanied with any indications of a desire to draw from him more than the truth. The offer of money, if with a view to corrupt, could not be too severely reprehended. It is certainly a dangerous

species of communication between those who are searching for testimony and the person from whom it is expected. But in this case, the court cannot contemplate the offer as being made with immoral views. The witness had a right to demand from those he was expected to accuse, a small sum of money sufficient to subsist him on his return to his home. He was asked, whether, on receiving this sum, his objections to giving testimony would be removed. This was certainly a delicate question, but it might be asked without improper motives, and it was pressed no further. This is not shown to be an attempt to contaminate the source of justice, and a consequent contempt of the court, in which it is administered.

The imprisonment of Mr. Knox, and the order for conveying him from New-Orleans to Richmond were the acts of Judge Hall. Whether his proceedings were legal or illegal, they are not shown to have been influenced by General Wilkinson, and this court cannot presume such to have been the fact; General Wilkinson, therefore, is not responsible for them. They were founded, it is true, on an affidavit made by him, but there was no impropriety in making this affidavit, and it remained with the judge to decide what the law would authorize in the case.

All the subsequent proceedings were directed by the civil authority. The agents who executed the orders of the judge were indeed military men, who, most probably, would not have disobeyed the commander in chief; but that officer is not responsible, in this way, for having failed to interpose his authority, in order to prevent the execution of the orders of

the judge, even if those orders ought not to have been given.

Upon a full view of the subject, the case appears to have been this: General Wilkinson was desirous that the testimony of the witness should be obtained; and aware of the accusations which had before been brought against him, for the use he had made of the military power, he was desirous of obtaining the testimony by lawful means, and therefore referred the subject to a judge of the territory, under whose orders all subsequent proceedings were taken. Whether the judge did or did not transcend the limits prescribed by law, those ministerial officers who obeyed his orders cannot be supposed to have acted with a knowledge that he had mistaken his power. Should it be admitted that this would be no defence for them in an action to obtain compensation for the injury, yet it furnishes sufficient evidence that no contempt was intended to this court by General Wilkinson, that he has not been guilty of any intentional abuse of its process, or of any oppression in the manner of executing it.

It is said that Captain Gains, the gentleman whom the marshal appointed as his deputy for this particular purpose, had not taken the oath of office, and was, therefore, not legally qualified to act in that character. However correct this observation may be in itself, it does not appear to the court to justify an attachment against General Wilkinson. The person who sees in the possession of another a commission as deputy marshal, and sees that others are acting under that commission, ought not to be subjected to a process of con-

tempt for having made no inquiries respecting the oath which the law requires to be taken.

The attachment will not be awarded, because General Wilkinson cannot be considered as having controlled or influenced the conduct of the civil magistrate, and because in this transaction his intention appears to have been not to violate the laws. In such a case, where an attachment does not seem to be absolutely required by the justice due to the particular individual against whom the prosecution is depending, the court is more inclined to leave the parties to the ordinary course of law, than to employ the extraordinary powers, which are given for the purpose of preserving the administration of justice in that purity which ought to be so universally desired.

The court made the following order on the postponement of the trial.

Aaron Burr, late of the city of New-York, and state of New-York, attorney at law, who stands indicted for treason, was this day brought to the bar in custody of the marshal of this district, and thereof arraigned, and pleaded not guilty to the indictment, and for his trial put himself upon God and the country ; whereupon he is remanded to jail. And as the trial of the said Aaron Burr cannot be had in the county of Wood, where the offence is alleged to have been committed, without great inconvenience, it is ordered, that a *venire facias* issue, to the marshal of this district to be directed, commanding him to summon forty-eight fit persons, qualified as the law directs, twelve of whom from the said county of Wood, to appear here on the

third day of August next, as a *venire* for the trial of the said Burr.

The court then adjourned to Monday, 29th of June, when the attorney for the prosecution said, that the executive counsel for the commonwealth of Virginia had offered the court the third story of the penitentiary for the safe keeping of Aaron Burr. The court accepted of the offer at first, but, on some objections to it, the court postponed the question until the next day, when the motion to commit him to said penitentiary was renewed, and after some discussion, and an explanation of the counsel of state, it was adjudged that the accused should be confined there. An adjournment then took place until the 3d of August next.

Colonel Burr has always expressed his gratitude to the good people of Richmond for their kind and gentlemanly treatment to him, and for their confidence in his honour, for there was not a moment, from the hour he was confined in their prisons until he was discharged by a verdict of acquittal, but that he might have escaped if he chose. They knew it, but confided to his honour, and found him true to it.

The court met, according to the adjournment, August 3d, 1807. The counsel on the part of the prosecution were not ready to proceed to trial, and the court was adjourned, from time to time, until the 17th of August, before a jury could be impanelled. Arguments of great length were made on various questions, which, it would seem to most lawyers, had long been settled in our courts of justice; but the court, on so important a trial, felt disposed to decide no questions without hearing counsel. On this day the

indictment was read, when Mr. Hay opened the cause on the part of government, in a very long speech, assuming that unquestionably the prisoner was guilty of high treason. Mr. Hay having finished his speech, proceeded to call his witnesses, and General Wilkinson was sworn. Colonel Burr objected to the order of calling witnesses for examination, insisting that the overt act must first be proved. The question was argued in extenso on both sides. Charles Lee, of Virginia, now appeared as counsel for Colonel Burr. On the 18th, the chief justice gave his opinion upon the point, which was, that the attorney for government should take his own course; but the court reserved to itself the right of judging of the relevancy of the testimony as it was elicited.

General Eaton was now called to the stand. His testimony related only to conversations between him and Colonel Burr, he could not state precisely when. It consisted of hints about penetrating Mexico, interlarded with the course Colonel Burr took to awake his resentments; of the just cause he had to be offended with the government of his own country; the manner in which Colonel Burr suggested he might find an indemnity. Conversations, he said, were held on the character of Miranda; of Wilkinson; of the witness having suggested to the president the propriety of giving Colonel Burr a foreign mission, to get him out of the way—not from any motives of friendship to him, but to save his country from a revolution. Some other matters were stated, but this was the substance of his testimony. Something was said of a toast that General Eaton, in his vanity, had sent to a printer for publication. Commodore Truxton was next sworn.

He knew nothing of Colonel Burr's acts ; he talked to me of a Mexican expedition ; said that the Mexicans were ripe for revolt ; he was positive that there would be a war ; that he was about to complete a contract for a large quantity of land on the Washita ; that he intended to invite his friends to settle it ; that in one year he would have a thousand families of respectable and fashionable people to settle it ; spoke of the country and his prospects in high terms.

Peter Taylor was next sworn as to what took place at Blannerhasset's Island ; but it did not go to prove any overt act on the island. The most of his evidence was hearsay. After the examination of several other witnesses, all that were called to prove the overt act at Blannerhasset's Island, the counsel for the accused objected to the introduction of evidence of acts done beyond the limits of the jurisdiction of the court. The argument on this question lasted many days. It is the most elaborate on any record in the English language. There was a great variety of talent engaged ; all kinds of argument exhausted ; all sorts of rhetoric displayed, from Gothic rudeness to oriental magnificence ; every age was ransacked for precedents or similarities ; every authority, from the dark ages to the present day, were cited. On Monday, August 31, 1807, the chief justice delivered his memorable opinion, which for clearness, ability, impartiality and independence, has no superior. It extended to 45 close octavo pages. Its result was, that "no testimony, relative to the conduct or declarations of the prisoner elsewhere and subsequent to the transactions on Blannerhasset's Island, can be admitted, because such testimony, being in its nature merely corroborative, and

incompetent to prove the overt act in itself, is irrelevant until there be proof of the overt act by two witnesses." This opinion was read in presence of the jury, in the nature of a charge to them. On the opening of the court, Tuesday, September 1, 1807, Mr. Hay informed the court that he had nothing to offer to the jury, of evidence or argument, that he had examined the opinion of the court, (which the chief justice had handed to him,) and must leave the case with the jury. The jury retired, and in a short time returned a verdict of acquittal.

The nation, although every thing had been directed to forestalling public opinion, were satisfied that the acquittal was just, and most began to believe that the prosecution, if not malicious, was the creation of political management. Wilkinson had become suspected, and wished for something to redeem his lost character; and this circumstance was seized. From vanity, free living, and assumption of consequence, he had disgusted most of his old friends, and he had made but few new ones. This goes far to show the cause of his course of conduct. General Eaton had just returned from his splendid African intentions and spirited acts, and was coldly received by the men in power. His accounts were unsettled, and the president had no sympathy with martial glory. He had no means left to secure executive favour, but the one he pursued. It was an inglorious one; but he was prepared for degradation, by dissipated habits, and profligate expenditures. Mr. Jefferson, too, wished for something to awaken new sympathies from the nation, and what could be of higher service to his country than to suppress a conspiracy. Cicero, after all

his literary exertions for fame, prided himself in having saved Rome from the machinations of Catiline. The philosopher panted for the same meed of glory. He was disappointed; and expressed this feeling in his message to congress, October 27, 1807, in no measured terms. After detailing other evils, which had come in various shapes, he says,

“I informed congress, at their last session, of the enterprises against the public peace, which were believed to be in preparation by Aaron Burr and his associates, of the measures taken to defeat them, and to bring the offenders to justice. Their enterprises were happily defeated by the patriotic exertions of the militia, whenever called out into action, by the fidelity of the army, and energy of the commander in chief, in promptly arranging the difficulties presenting themselves on the Sabine, repairing to meet their arriving on the Mississippi, and dissipating, before their explosion, plots engendered there. I shall think it my duty to lay before you the proceedings, and the evidences publicly exhibited on the arraignment of the principal offenders before the district (circuit) court of Virginia. You will be enabled to judge whether the defect was in the testimony, in the law, or in the administration of the law; and wherever it shall be found, the legislature alone can apply or originate the remedy. The framers of our constitution certainly supposed they had guarded, as well their government against destruction by treason, as their citizens against oppression, under pretence of it; and if their ends are not attained, it is of importance to inquire by what means, more effectual, they may be secured.”

The servants of the government deserved, and received their reward. Mr. Hay was not twenty-four hours without communications from Washington, and he had not art enough to conceal the situation in which he stood. Wirt was looking for patronage, and was ready to work up his whole store of rhetoric for the occasion. Colonel Burr was not only vexed, and put to great expense in Kentucky and Tennessee, yet in both places he was fairly and honourably acquitted, but it was necessary to wed the military and civil power together to drag him twelve hundred miles for a vexatious trial; and the humblest part of the machinery was rewarded. For more than seven months Colonel Burr suffered imprisonment, insult, and heavy expenses, to defend himself against the strong hand of power, that never felt a placable moment, nor ceased an instant from persecution; against the insinuations of bloated military imbecility, tottering in the pride of place, and the hallucinations of inebriety, begetting upon itself the nightmare-shapes of fear, all which were pressed to turn to good account at the comptroller's office. During this long agony Colonel Burr never suffered his philosophical composure to desert him for a single moment. In prison, under the lash of the most vituperative eloquence, he wore the same unruffled demeanour. In every excitement in the trial, he was the oil upon the water, and smoothed the angry billows. His speeches were short, pithy, and pointed, and had their effect. If a martyr of the ancient church had been on trial, he could not have had a better command of his temper than Colonel Burr exhibited. The chief justice was cautious, prudent, but direct and fearless. He heard arguments until all were exhausted,

without any restlessness, and made up his mind calmly and cautiously, but expressed his opinions with great firmness and decision. His fame might rest on this trial alone; but his life has been one of fearless honesty, and almost unexampled popularity. The force of party rancour never reached him; the popular gale never swayed him, and even executive denunciations did not disturb his serenity.

To show the prejudices and outrages that Colonel Burr had to fight against, we must go beyond the trial itself. Every engine was set to work to poison all the channels of public opinion. Now and then a sincere friend ventured to speak his mind fearlessly, and with a powerful voice. The following letter from Luther Martin is worthy of record, from the depth of its feeling, and the strength of its satire, united to the justness of the whole current of sentiment to be found in the production.

“BALTIMORE, July 23d, 1807.

“Messrs. Zebulon Hollingworth, John Gilpin, James Sewell, Thomas W. Veasy.

“GENTLEMEN—I find from the public papers, that on the 4th of July, you respectively officiated in the respective characters of president, vice president and secretaries, at a meeting of the citizens of Cecil county, held at Elkton, to celebrate the anniversary of American independence; and it is as persons who officiated in those characters, and in consequence of your conduct on that occasion, that I now take the liberty of addressing you.

“On the 4th of July, 1776, we declared ourselves independent states, free from the tyranny and despot-

ism of any nation on the earth, and proceeded to establish governments for the sacred security of the property, the reputation, the liberty and the life of every person who should be so far blest as to be citizens of those governments. We then pledged ourselves to the God of the universe, that the property, the reputation, the liberty and the life of every citizen should be safe, should be protected against the tyranny of the one or the many, and should only be taken from them by the laws of their country, faithfully, honestly, and impartially dispensed, by an open, *fair, impartial trial, decided upon legal evidence*, in which every benefit to be had from counsel, is secured, by the constitution, to the citizen, who is as to either assailed.

“Let me ask you, gentlemen, to what use, or, more properly, abuse, did you turn the *anniversary of that day*? Was your conduct calculated to preserve and secure those blessings, for the enjoyment of which the people of America heretofore hazarded all that was dear? Or was it calculated to render them more insecure than even under Asiatic despotism?

“Let me examine this question. I have seen your list of toasts drank on that day, as published by yourselves.

“On your *volunteers* I shall make no remarks. After seventeen bumpers had been drank, I can make great allowances for any thing that took place; but for the toasts deliberately prepared, and agreed to be drank on that day, myself, my fellow-citizens, and the world at large, do and will hold you answerable. Three of these toasts will be the subject of my animadversions.

“The 7th is in the following words:

“ ‘ The grand jurors lately impanelled at Richmond, to indict the traitors of their country—May their zeal and patriotism in the cause of liberty, secure them a crown of immortal glory, and the fruits of their labour be a death wound to all conspirators.’

“ The 8th. ‘ Luther Martin, the ex-attorney general of Maryland, the mutual and highly respected friend of a convicted traitor—May his exertions to preserve the Catiline of America, procure him an humble coat of tar, and a plumage of feathers that will rival in finery all the mummeries of Egypt.’

“ The 9th. ‘ Aaron Burr, the man who once received the confidence of a free people—May his treachery to his country exalt him to the scaffold, and hemp be his escort to the republic of dust and ashes.’

“ To any person of common sense, who possesses one sentiment of candour, one human feeling of the heart, it would be supposed, that none but demons from hell could, on such an occasion, have deliberately prepared and drank the foregoing toasts, unless they had the most perfect knowledge of Colonel Burr’s guilt. And, even in that case, he would naturally conclude the persons to be *savages* or *descendants* of savages, who, when they kill their prisoner, feast their inhuman souls with every cruelty of torture.

“ But, gentlemen, have you any knowledge that Colonel Burr is guilty of treason, or of any other offence? Doth either of you know of one single fact, to prove upon him guilt of any kind? Why have you not come forward and informed your government? And why had I not the pleasure of seeing you as witnesses at Richmond?

“ I know your answer. You must confess that you have no personal knowledge of any thing criminal that has been committed by Colonel Burr, but that in the *Aurora*, the *Argus*, and many other democratic papers, you have seen him charged with not only misdemeanours but treason ; nay, you will probably say, that the president of the United States, in his message to congress, declared his *guilt to be placed beyond doubt*.

“ And after the length of time you have lived, a length of time which has whitened some of your heads ; after the different public appointments which some of you have executed, am I to put you in mind, that not one shilling’s worth of your *dirty property* can be taken from you without your having an opportunity of being personally heard, nor without *legal evidence*, delivered *on oath in your presence*, with liberty, on your part, to *cross-examine*, and by other evidence to contradict ? And yet you have, to the utmost of your power, wantonly and wickedly assailed the good name, fame and reputation of Colonel Burr, upon no evidence ! You have done what is still more wicked, you have, without any evidence, *assailed his life* ! For, are you now, for the first time, to be instructed, that whenever a person is to be tried for a charge, which is punishable with death, he who endeavours to prejudice and inflame the public mind against him, he who does any act of a tendency to prevent the accused from having a fair, dispassionate, impartial trial, is, in the eye of God, guilty of as murderous an intention as if he attempted to plunge a dagger to his heart ? Equally murderous, but *infinitely more cowardly*—as the danger of punishment in the first case is meant to be avoided. What

think you, gentlemen, of the cowardly wretch, who, anxious for the blood of an enemy, but fearful of danger or of punishment, slips a stiletto into the hands of an assassin, and points to the victim? What think you of yourselves, and the rest of those who drank your savage toasts? Would you not have swallowed the beverage in your glasses, had it been the blood of Colonel Burr, with more pleasure than the juice of the grape? Would not those who could express such savage delight in the *hope of his death*, could they do it with impunity, rip open his breast, tear out his heart, gnaw it with their teeth, and suck down its blood, as acted the blood-thirsty Parisians toward the amiable, the accomplished, the beautiful Lamballe? And know you not, that the gentleman, whose death would be such a feast to your savage souls, has a daughter as amiable, as accomplished, as lovely as was Lamballe; and to her you have been drinking a life of unutterable misery? You may, possibly, think this language severe; but, in a case like this, *no language can be severe*.

“I would wish to harrow up every feeling of your souls, if, indeed, *such* souls can have any feeling!

“You have toasted the grand jury, when you knew not whether they did right or wrong; when you knew not whether the persons indicted, are traitors or innocent citizens; whether the grand jury were actuated by zeal and patriotism in the cause of liberty, or by zeal and sycophancy in the cause of persecution; whether their conduct deserves a crown of immortal glory, or a noose of immortal infamy; for you have no knowledge that can enable you to decide upon the propriety or impropriety of their conduct. The

toast, therefore, only stands staring you in the face, to your eternal dishonour, as a proof of your ferocity against Colonel Burr. Nor, gentlemen, will the grand jury thank you for the toast. They were gentlemen of honour, of worth, of humanity; they were not actuated by the hellish wish, that the persons, concerning whose conduct they were to inquire, should prove to be guilty; nor did they, in returning the bills true, feel an infernal pleasure. No, sirs, not a man of that grand jury assented to the finding of the bills, whose heart will not enjoy an exquisite pleasure should their innocence, on a fair, impartial trial, before a petty jury, (if, indeed, such a trial can be had, and which you have murderously endeavoured to prevent,) be made manifest. Not a friend of the gentlemen indicted blames the *grand jury*. But are you to be informed, that the grand jury can only act upon evidence *selected*, and sent to them for the *very purpose* of proving *guilt*; examined *ex parte*; and that *perjury* can there appear unappalled! And are you to be informed, that the benign spirit of our laws, even after indictment, presumes innocence? those laws that are said to be our government, which you are bound to support; and yet you, good, virtuous republicans, who boast of your love of liberty, your sacred regard for the laws, and who call yourselves the protectors, the guardians of the rights of every man, have thought proper not only to *presume guilt*, but have presumed to hold up to the indignation of your country, him whom the laws of your country presume to be innocent!

“And now let me inquire who is this gentleman whose guilt you have pronounced, and for whose blood

your *parched* throats so thirst? Was he not, a few years past, adored by you next to your God? I mean your *earthly* God; for whether you believe in a deity, who has any government over your ‘republic of dust and ashes,’ I know not. Were you not then his warmest admirers? Did he not then possess every virtue? Had he then one sin—even a single weakness of human nature? He was then in power. He had then influence. You would then have been proud of his notice. One smile from him would have brightened up all your faces. One frown from him would have lengthened all your visages.

“But now he is a private citizen—he is now no longer in power—he is now persecuted!—and, behold, he is now a Catiline—he is now a traitor. Your prayers are now that he may be exalted to the scaffold—that hemp may be his escort to the ‘republic of dust and ashes;’ and to these invocations you have prostituted the anniversary of a day, which only ought to be held dear as long as government, consequently established, shall sacredly protect property, reputation, liberty and life.

“Go, ye holiday, ye sunshine friends—ye time servers—ye criers of hosanna to-day and crucifiers to-morrow—go hide your heads, if possible, from the contempt and detestation of every virtuous, every honourable inhabitant of every clime.

“Your eighth toast, as it personally relates to myself, gives me no uneasiness. I only notice it, as proving the accursed malignity of your hearts towards Colonel Burr.

“As to myself, I have never insulted or injured a single individual, who, on that occasion, celebrated the

day. In the whole company I had not a personal enemy ; nor was there a man among you that had reason to be so. With many of that company, perhaps with all, I had been personally acquainted. I had been in habits of receiving and returning polite attentions ; on some, at least, of the company, I had conferred benefits ; nor was there one man in the company, on whom I would not have conferred any benefit he needed, and in my power with propriety to have bestowed. Nay, so well do I know you all, and the good will that you possess for me, that I have the most perfect confidence, had I arrived at Elkton the moment after you had drank your eighth toast, and entered your room, you would have received me in the most friendly manner ; you would have requested me to share in the festival ; and your politeness would have induced you to have suppressed your ninth and tenth toasts.

“ Having thus done you justice, having acquitted the company, to a man, of any personal resentment against me, let me state what was *my conduct*, which induced you deliberately to prepare and deliberately to drink the eighth toast.

“ I had appeared as one of Colonel Burr’s counsel ; and pray doth not the constitution most sacredly secure to him the benefit of counsel ? Can it then be said that a person shall be criminal, or even censurable, for doing what your constitution authorizes him to do ? Nay, if by public clamour, counsel is to be intimidated, and prevented from appearing for the accused, is not the constitution thereby violated ? and is not the accused thereby deprived of a consti-

tutional right, and, if convicted, unconstitutionally convicted?

“But I appeared in his defence as his friend, not merely as an attorney for my fee. And how long has it been, or upon what maxim is it established, that to do an authorized act, from motives of friendship, is less honourable than from motives of sordid interest?

“But you will say that you believe him guilty of treason. I reply, you have no legal evidence on which you can found this belief. I will further say, that I, who have infinitely better information on the subject, believe Colonel Burr to be as innocent of any thing treasonable, in act or intent, as the infant unborn; and that I believe the executive of the United States is at this time of the same opinion; and for the truth of this assertion I appeal to my God. And I further answer, that if Colonel Burr was as guilty of treason as you, without any knowledge of the fact, declare him to be, yet he is entitled to a fair and impartial trial; and the constitution secures to him the benefit of counsel. You will, perhaps, as your last resort, for, in truth, you have no other, tell me that, at all events, you wish him to be hung, and therefore are enraged at every thing which interferes with your wishes. Then, sirs, you ought to proceed in the true French style, for which, indeed, you appear quite ready—‘hang first, and try afterwards!’ it would save a world of trouble, and gratify many a revengeful malignant fiend.

“The whole burthen of my crime is resolved to this, that I have, in a case where the honour, the life of a friend, and the happiness of all who are dear to him, are at stake, had the hardihood, even although it might prevent you from feasting on his blood, to offer to him

from motives of friendship, those services which the trifling abilities my God hath kindly bestowed on me, may enable me to render him. I have thrown my body as a shield between the dagger of the assassin and the heart intended to be pierced!

“And for this conduct, for which, if history records the event, I shall be respected as long as the page of history shall last, by all the worthy and good;—yes, for this conduct, not only innocent, but praiseworthy, if any conduct of man can be so—you, the advocates of the constitution—you, exclusive republicans—you, the supporters and advocates of the rights of man, and of a government of laws—you, the sworn enemies of despotism, in whatever shape it may appear—would, if in your power, arm an infuriated mob against a private individual who never gave you the slightest cause of complaint, and would be glad to see him, if his life was spared, suffer insult and injury to the last extreme which could be inflicted! Remember, gentlemen, I only hold up to your view the mirror of truth; blame yourselves only for the monstrous images of deformity which meet your vision.

“In your toast you have particularly noticed me, as ‘the mutual and highly respected friend of an indicted traitor.’

“Remember, gentlemen, a few years only have passed since you boasted of your friendship for Colonel Burr. Your tongues, at that time, moved as quickly, and with as much ease, as doth the aspen leaf under the influence of the atmosphere, in his praise; and had I then presumed to have treated his name as you have treated it, I should not have been surprised if I had been tarred and feathered; and, indeed, should

have thought that I richly deserved it. He was then your *political* friend ; *such he never has been to me*. Our friendship has been *personal*, our *politics* have ever been *different*. Think, then, if my heart was such a heart as you possess ; that my friendships were formed from political motives only, and depended entirely upon the situation of the person—whether he was in power, or a private citizen ; whether he was the object of executive favouritism or persecution : cannot you suppose such a heart might be gratified in the extreme, to see that power which *he did bestow*, which *he only could have bestowed*, upon one who now possesses power, (a *truth* notorious, and which democracy hath often acknowledged,) now exerted for the destruction of him who gave it ? Yes, gentlemen, if my heart was like yours, I might, perhaps, take as savage a pleasure in beholding his execution as it is evident you would take.

“ A few words more before we part. You have shown to the world a disposition to expose me to an enraged mob ; a disposition to see me suffer insult and injury, and what I suppose such beings as you would call *disgrace*. My life, I acknowledge, is in the power of an assassin ; it is in the power of an infuriated multitude ; but to me that is a consideration which never hath, nor never will influence my conduct. I know that I must die. To me, who have lived longer than I had a right to expect, the time when it shall take place is not to myself of much consequence ; nor do I know that it is so to my country ; but there is a number of individuals to whose felicity my life is of importance ; for their sake I would not rashly expose it. As to the manner in which my life shall terminate : whe-

ther surrounded by my friends in my bed ; whether torn limb from limb by an enraged mob ; or whether perjury should "exalt me to the scaffold," is to me *perfectly indifferent*: my *future existence* will not be thereby affected ; nor can I, by the manner of my death, nor by brutal violence in my life, be disgraced. I shall hold my reputation and my honour on a much surer tenure than the unstable voice of what is called popularity, to obtain which I never sacrificed one feeling of my heart, nor one duty which I owed either to God or to man.

"I AM KNOWN, and I am respected, in every state and in every territory belonging to the United States. I repeat, *I am RESPECTED*. Do you wish to know why ? Because my heart is the very reverse of those belonging to my Elkton toasters ; because I never intentionally injured a human being ; because, instead of increasing the miseries of human life, I would, if possible, render this world a paradise ; because my wishes have been proved sincere by my conduct, as far as my fortune and my situation in life have given me power ; and because it is known I am *incapable of deserting a friend in distress*.

"On the subject of mobs, permit me to assure you, I fear no violence from any combination of American citizens. By that description I mean all those, of whatever clime, who were here when the peace of 1783 took place, and the descendants of all such persons. My name disclosed, even should my person not be known, would, as to them, be a security from violence.

"I now, gentlemen, take my leave of you, most sincerely assuring you, that, as to what relates to myself, I freely forgive you, and that I feel no resent-

ment against you. My indignation hath been excited and expressed against your conduct on account of Colonel Burr; on account of its immediate tendency, and your wicked intentions, to deprive him, in a case where his honour and his life are at hazard, of that fair and impartial trial, which the constitution and laws of your country stand pledged to him that he should have; of which pledge, with a sacrilegious hand, you have robbed him. And I have been actuated by a wish to express to the public my detestation of, and, as far as in my power, put an end to that infamous, that infernal, that murderous conduct, which has been common in the democratic papers, and too much countenanced in the federal papers, to make the press, which ought to be the guardian of public liberty, the shield of innocence, and, even as to guilt, the angel of mercy; to make that press the demon of envy, hatred and revenge, the Moloch of persecution, whenever personal or political enemies were to be hunted down: a practice, not only the dishonour and disgrace of this country, but under which no man can be safe. Such has been the conduct of printers on a former occasion as to Colonel Burr; such has been the conduct of printers in the case of Selfridge; such has been the conduct of printers in the present case as to Colonel Burr; but you, gentlemen have the unparalleled guilt, which I hope will never be paralleled, of endeavouring to turn the fourth of July into an *auto da fé*, on that day to burn your victims.

“And remember, gentlemen, what is Colonel Burr’s case now, may be the case of any one of you hereafter, unless you are protected by your insignificancy. You may become obnoxious to individual hatred; you

may become obnoxious to some future administration; you may be accused of some capital crime; interest and influence, hatred and malice, may inflame the public mind against you; the celebrators of the fourth of July may devote you to a halter, before a jury whose minds have been poisoned against you; you may be brought for trial before a jury that has already prejudged your cause, from the public papers, as you have prejudged the cause of Colonel Burr. Their fiat is to determine whether you die an ignominious death; whether your wives and children shall suffer despair and distraction. In such a situation you will feel the infamy of that conduct of which you have boasted; and you will then know how to appreciate the merits of any gentleman who shall dare to advocate your cause, even for the consideration of money, leaving friendship out of the question.

“ LUTHER MARTIN.”

I insert the three following letters from Mr. Jefferson to Colonel Burr, to show their intimacy while the latter was in the senate of the United States from the state of New-York, and the cause of the rupture between them, as will clearly be seen by the second and third letters. Mr. Jefferson's aim was to get Colonel Burr to commit himself; but this he did not do.

To Colonel Burr.

PHILADELPHIA, June 17, 1797.

DEAR SIR—The newspapers give so minutely what is passing in congress, that nothing of detail can be wanting for your information. Perhaps, however, some general view of our situation and prospects,

since you left us, may not be unacceptable. At any rate, it will give me an opportunity of recalling myself to your memory, and of evidencing my esteem for you. You well know how strong a character of division had been impressed on the senate by the British treaty. Common error, common censure, and common efforts of defence, had formed the treaty majority into a common band, which feared to separate even on other subjects. Towards the close of the last congress, however, it had been hoped that their ties began to loosen, and their phalanx to separate a little. This hope was blasted at the very opening of the present session, by the nature of the appeal which the president made to the nation; the occasion for which had confessedly sprung from the fatal British treaty. This circumstance rallied them again to their standard, and hitherto we have had pretty regular treaty votes on all questions of principle. And indeed I fear, that as long as the same individuals remain, so long we shall see traces of the same division. In the house of representatives the republican body has also lost strength. The non-attendance of five or six of that description has left the majority very equivocal indeed. A few individuals, of no fixed system at all, governed by the panic or the prowess of the moment, flap as the breeze blows against the republican or the aristocratic bodies, and give to the one or the other a preponderance entirely accidental. Hence the dissimilar aspect of the address, and of the proceedings subsequent to that. The inflammatory composition of the speech excited sensations of resentment which had slept under British injuries, threw the wavering into the war scale, and produced the war address. Bonaparte's victories and

those on the Rhine, the Austrian peace, British bankruptcy, mutiny of the seamen, and Mr. King's exhortations to pacific measures, have cooled them down again, and the scale of peace preponderates. The threatening propositions, therefore, founded in the address, are abandoned one by one, and the cry begins now to be, that we have been called together to do nothing. The truth is, there is nothing to do, the idea of war being scouted by the events of Europe: but this only proves that war was the object for which we were called. It proves that the executive temper was for war; and that the convocation of the representatives was an experiment of the temper of the nation, to see if it was in unison. Efforts at negotiation indeed were promised; but such a promise was as difficult to withhold as easy to render nugatory. If negotiation alone had been meant, that might have been pursued without so much delay, and without calling the representatives; and if strong and earnest negotiation had been meant, the additional nomination would have been of persons strongly and earnestly attached to the alliance of 1778. War then was intended. Whether abandoned or not, we must judge from future indications and events: for the same secrecy and mystery are affected to be observed by the present, which marked the former administration. I had always hoped, that the popularity of the late president being once withdrawn from active effect, the natural feelings of the people towards liberty, would restore the equilibrium between the executive and legislative departments, which had been destroyed by the superior weight and effect of that popularity; and that their natural feelings of moral obligation would

discountenance the ungrateful predilection of the executive in favour of Great Britain. But, unfortunately, the preceding measures had already alienated the nation who were the object of them, had excited reaction from them, and this reaction has, on the minds of our citizens, an effect which supplies that of the Washington popularity. This effect was sensible on some of the late congressional elections, and this it is which has lessened the republican majority in congress. When it will be reinforced must depend on events, and these are so incalculable, that I consider the future character of our republic as in the air ; indeed, its future fortune will be in the air, if war is made on us by France, and if Louisiana becomes a Gallo-American colony.

I have been much pleased to see a dawn of change in the spirit of your state. The late elections have indicated something, which, at a distance, we do not understand. However, what with the English influence in the lower, and the Patroon influence in the upper parts of your state, I presume little is to be hoped. If a prospect could be once opened upon us of the penetration of truth into the eastern states ; if the people there, who are unquestionably republicans, could discover that they have been duped into the support of measures calculated to sap the very foundations of republicanism, we might still hope for salvation, and that it would come, as of old, from the east. But will that region ever awake to the true state of things ? Can the middle, southern and western states hold on till they awake ? These are painful and doubtful questions ; and if, in assuring me of your health, you can give me a comfortable solution of

them, it will relieve a mind devoted to the preservation of our republican government in the true form and spirit in which it was established, but almost oppressed with apprehensions that fraud will at length effect what force could not, and that what with currents and counter-currents, we shall, in the end, be driven back to the land from which we launched twenty years ago. Indeed, my dear sir, we have been but a sturdy fish on the hook of a dexterous angler, who, letting us flounce till we have spent our force, brings us up at last.

I am tired of the scene, and this day se'nnight shall change it for one, where, to tranquillity of mind, may be added pursuits of private utility, since none public are admitted by the state of things.

I am, with great and sincere esteem, dear sir, your friend and servant,

TH: JEFFERSON.

P. S. Since writing the above, we have received a report that the French Directory has proposed a declaration of war against the United States to the Council of Ancients, who have rejected it. Thus we see two nations who love one another affectionately, brought, by the ill temper of their executive administrations, to the very brink of a necessity to imbrue their hands in the blood of each other.

T. J.

To Colonel Burr.

WASHINGTON, December 15, 1800.

DEAR SIR—Although we have not official information of the votes for president and vice president, and cannot have until the first week in February, yet the

state of the votes is given on such evidence, as satisfies both parties that the two republican candidates stand highest. From South Carolina we have not even heard of the actual vote ; but we have learned who were appointed electors, and with sufficient certainty how they would vote. It is said they would withdraw from yourself one vote. It has also been said that a General Smith, of Tennessee, had declared he would give his second vote to Mr. Gallatin, not from any indisposition towards you, but extreme reverence to the character of Mr. Gallatin. It is also surmised that the vote of Georgia will not be entire. Yet nobody pretends to know these things of a certainty, and we know enough to be certain that what it is surmised will be withheld, will still leave you four or five votes at least above Mr. Adams. However, it was badly managed not to have arranged with certainty what seems to have been left to hazard. It was the more material, because I understand several of the high-flying federalists have expressed their hope that the two republican tickets may be equal, and their determination in that case to prevent a choice by the house of representatives, (which they are strong enough to do,) and let the government devolve on a president of the senate. Decency required that I should be so entirely passive during the late contest, that I never once asked whether arrangements had been made to prevent so many from dropping votes intentionally, as might frustrate half the republican wish ; nor did I doubt, till lately, that such had been made.

While I must congratulate you, my dear sir, on the issue of this contest, because it is more honourable, and doubtless more grateful to you than any station within

the competence of the chief magistrate, yet for myself, and for the substantial service of the public, I feel most sensibly the loss we sustain of your aid in our new administration. It leaves a chasm in my arrangements, which cannot be adequately filled up. I had endeavoured to compose an administration, whose talents, integrity, names and dispositions, should at once inspire unbounded confidence in the public mind, and insure a perfect harmony in the conduct of the public business. I lose you from the list, and am not sure of all the others. Should the gentlemen who possess the public confidence decline taking a part in their affairs, and force us to take persons unknown to the people, the evil genius of this country may realize his avowal that "he will beat down the administration." The return of Mr. Van Benthuyzen, one of your electors, furnishes me a confidential opportunity of writing this much to you, which I should not have ventured through the post-office at this prying season. We shall, of course, see you before the fourth of March. Accept my respectful and affectionate salutations.

TH : JEFFERSON.

To Colonel Burr.

WASHINGTON, February 1, 1801.

DEAR SIR—It was to be expected that the enemy would endeavour to sow tares between us, that they might divide us and our friends. Every consideration satisfies me you will be on your guard against this, as I assure you I am strongly. I hear of one stratagem, so imposing and so base, that it is proper I should notice it to you. Mr. Munford, who is here, says he saw at New-York, before he left it, an original letter of mine to Judge Breckenridge, in which are senti-

ments highly injurious to you. He knows my hand-writing, and did not doubt that to be genuine. I enclose you a copy, taken from the press copy, of the only letter I ever wrote to Judge Breckenridge in my life : the press copy itself has been shown to several of our mutual friends here. Of consequence, the letter seen by Mr. Munford must be a forgery ; and if it contains a sentiment unfriendly or disrespectful to you, I affirm it, solemnly, to be a forgery ; as also if it varies from the copy enclosed. With the common trash of slander I should not think of troubling you ; but the forgery of one's hand-writing is too imposing to be neglected. A mutual knowledge of each other, furnishes us with the best test of the contrivances which will be practised by the enemies of both.

Accept assurances of my high respect and esteem.

TH : JEFFERSON.

The following letter from Jefferson's Correspondence, is added, to prove the disposition which has been ascribed to him, and we insert it with the reflections which have been made upon it in a work lately printed in Boston, entitled, "Familiar Letters on Public Characters," &c. This work is attributed to the pen of a distinguished lawyer and statesman, who has no spleen to gratify, no resentments to settle, but who, in the fearlessness of political and moral integrity, dares to express his sincere opinions. We fully agree with the writer, that "most extraordinary is it, that one of his own family" (Mr. Jefferson's) "should have given to the world the following picture of the true character of the man :

To George Hay.

“MONTICELLO, September 4, 1807.

“DEAR SIR—Yours of the 1st came to hand yesterday. The event has been.” (*Here a number of stars are introduced, showing that something was written, which even Mr. Jefferson’s editor did not venture to disclose,*) “that is to say, not only to clear Burr, but to prevent the evidence from ever going before the world. It is now, therefore, more than ever indispensable, that not a single witness be paid, or permitted to depart, until his testimony has been committed to writing, either as delivered in court, or as taken by yourself in the presence of any of Burr’s counsel, who may choose to cross-examine. These whole proceedings will be laid before congress, that they may decide, whether the defect has been in the evidence of guilt, or in the law, or in the application of the law; and that they may provide the proper remedy for the past and for the future.

“I must pray you, also, to have an authentic copy of the record made out, (*without saying for what,*) and to send it to me. If the judge’s opinions make not a part of it, then I must ask a copy of them, either under his hand, if he delivers one signed, or duly proved by affidavit.

“This criminal is *preserved* to become the rallying point of all the disaffected and worthless in the United States; and to be the pivot, on which all the intrigues and conspiracies, which foreign governments may wish to disturb us with, are to turn. If he is convicted of the misdemeanour, the judge must, in decency, give us respite by some short confinement of him; but we must

expect it to be very short. Be assured yourself, and communicate the same assurances to your colleagues, that your and their zeal and abilities have been displayed in this affair, *to my entire satisfaction*, and to your own honour."

Such is the letter which *Thomas Jefferson* wrote concerning the official conduct of *John Marshall*, chief justice of the United States! Is it or not the outpouring of a peculiarly organized mind, at having lost its expected victim? Is it or not a search after means to dishonour a judicial officer, perhaps to impeach and remove him, because he did not convict, on solemn public trial, with the guard of a jury, one whom Mr. Jefferson had condemned in his closet, *unheard*, on the testimony of his own parasites? Is such a man a fit person to conceive of the solemnity and purity of the administration of justice, where human life is involved, and where the law declares every man to be presumed innocent until found guilty? If Mr. Jefferson could have placed Talmadges and Halls on the bench, at his pleasure, and could have packed his juries, what would have been the fate of the "disaffected and worthless," in this land of liberty? Whatever may be thought of Burr, and however desperately wicked any one may please to think him, it is the principle of action, disclosed in this letter, which terrifies and astonishes, considering what station he held who wrote it. Here is one more proof, that those who talk and boast the loudest of republican liberty, are the men least qualified to be trusted with power.

This trial requires some remarks. In the course of the argument, some suggestions were made, (and very possibly in consequence of the letters written to Mr.

Hay by Mr. Jefferson, during the trial,) that the court might be under some bias favourable to Colonel Burr. These called for some notice on the part of the chief justice. He did notice them with calmness, self-respect and dignity, which deserves to be remembered for ever, not only to his due honour, but as an example of judicial independence and propriety, on which, no doubt, the liberties of this country depend, Mr. Jefferson's doctrines notwithstanding.

"Much," says the chief justice, "has been said, in the course of the argument, on which the court feels no inclination to comment particularly, but which may, perhaps, not improperly receive some notice. That this court dares not usurp authority is most true. That this court dares not shrink from its duty is not less true. No man is desirous of becoming the peculiar subject of calumny. No man, might he let the bitter cup pass from him without self-reproach, would drain it to the bottom. But if he have no choice in the case ; if there be no alternative prescribed to him, but a dereliction of duty, or the opprobrium of those denominated the world, he merits the contempt as well as the indignation of his country, who can hesitate which to embrace.

"That gentlemen, in a case the most interesting, in the zeal with which they advocate particular opinions, and under the conviction, in some measure, produced by that zeal, should, on each side, press their arguments too far, should be impatient at any deliberation in the court, and should suspect, or fear the operation of motives, to which alone they can ascribe that deliberation, is, perhaps, a frailty incident to human nature ; but if any conduct on the part of the

court could warrant a sentiment that it would deviate to the one side or to the other, from the line prescribed by duty and law, that conduct would be viewed by the judges themselves with an eye of extreme severity, and would long be recollected with deep and serious regret."

These are the sentiments of one who understood the sacred trust of administering justice according to law, in a government of laws; sentiments which Mr. Jefferson was incapable of conceiving. He is rather to be commiserated than reproached for his incapacity.

This trial deserves remark on other grounds. The time may come, when a *popular* president and a subservient senate may place in judicial seats mere instruments of executive will. This is one way in which despotism may approach, and not an improbable one; quite as probable as in military form. We have already seen something of this in Mr. Jefferson's reign (embargo times;) nothing was wanting then but the proper instruments.

At the time of this trial, Mr. Jefferson had acquired to himself, almost entirely by his pen, an astonishing supremacy over public opinion. All who did not bow to him were the "disaffected and the worthless." He cordially hated Burr. Every measure had been taken to pre-occupy the minds of the citizens against him. It was hardly to be expected, that he should have a fair trial anywhere; and especially, perhaps, in the state in which he was tried; for there he had been prejudged by many of the most influential men on Mr. Jefferson's own assurances of his guilt. It is of

no importance who or what the accused may have been ; he was entitled to a trial according to law.

Taking the peculiar circumstances of the trial into view, it is one of remarkable interest, and is well worth consideration for the instruction which it imparts. The accused had been the equal competitor with his real prosecutor for the highest office in a great republic. He was, for four years, second only to him, and had but recently descended from his elevation. His trial was for his life, nor for his life only, but that it might end on the gibbet, for a crime so infamous as to include, in its complete perpetration, almost every other in the catalogue of crimes. Here was a grand jury who believed him so far guilty as to think it their duty to subject him to that trial. Here was a collection of jurors, as fair and impartial, perhaps, as the state of public excitement would permit ; and here were learned and eminent counsel on both sides. The one intent to convict, not only because they thought this the line of professional and patriotic duty, but because they could not shut out from view, that conviction would be grateful to the man of the people. The other side, intent on applying the law and the evidence, as it should be applied ; and, perhaps, influenced by the fact, that they had some responsibility in shielding one whose condemnation would have been, not merely an act of justice, but a political triumph. Presiding over this contention, sat one who could have felt no favour for the accused : and who must have abhorred the crimes which the indictment alleged. He could not have been ignorant of the character of the prosecution. In such circumstances, happily for him, he could rise above all mo-

tives, which the pure administration of justice rejected. It has rarely fallen to the lot of any man, to have had occasion to seek so earnestly for the truth, both as to the law and as to the evidence; and to no man, to have conducted himself with more dignity and magnanimity, in the most responsible station in which one can be placed.

There is an emotion of sadness in reflecting on the professional labour of this case. The feelings and the exertions of an advocate are little appreciated by the world. The judge has to feel the way of his duty and to adhere to it, leaving consequences to themselves. The accused must be presumed to have thought of consequences, before he took on himself to act; but he confides his hopes and his fears, his life and his fame, to his counsel; and they painfully realize that he does so. Laborious, indeed, must have been the exertions, in the intensity of summer, in a southern clime, in this serious investigation. The arguments, as reported, give some intimation of what these exertions were, in searching out, comparing and arranging authorities; but they do not and cannot disclose to the world the painful anxiety of preparing and delivering the result of intense intellectual effort.

There is one circumstance in this affair of Colonel Burr, which ought to be noticed, as it shows Mr. Jefferson's views of the proper exercise of power. Swartwout and Bollman had been forcibly seized by General Wilkinson at New-Orleans, and sent under guard to the city of Washington, and there committed to prison. If these persons had been guilty, or liable to be put on trial at all, the trial should have been had in the district in which the crime was committed, viz. the Mis-

issippi territory, in which the seat of justice was at New-Orleans. These persons moved the court for a writ of habeas corpus, and both of them were discharged, because the proper place of prosecution, if there were evidence against them, was New-Orleans, and not the city of Washington. If Wilkinson did not act by order of Mr. Jefferson, he acted with his approbation. Hence it appears what views Mr. Jefferson entertained as to the exercise of power ; and what he would have done, if his friend Giles's motion to suspend the writ of habeas corpus had prevailed. The only apology which can be offered for Mr. Jefferson is, that he seems to have sincerely believed the will of a president *elected by the people*, (and none could be considered as part of the people who did not vote for him,) to be the supreme law. Thus it is obvious, that the will of such a president is a despotism ; and of the worst sort, because he can give it the forms of law, when he can surmount the obstacle of judiciary interference.

In 1807 Colonel Burr sailed for London, by way of Halifax, determined to see something of the world, while the waves of prejudice were rolling over him. Among his first acquaintance in England was the celebrated Jeremy Bentham. Colonel Burr, on his arrival, called on his bookseller, with whom he had often corresponded, for a supply of books, and made particular inquiries for his old favourite author, Bentham, and wished to be informed if he had lately published any work, as he was anxious to see any thing from his luminous and powerful mind. This compliment was conveyed to Bentham, who, obtaining Colonel Burr's

address, shortly afterwards called on him, and an acquaintance commenced which soon ripened into a high admiration of each other, which knew no abatement. Bentham invited the self-exiled stranger to his hospitable mansion, to become an inmate. They lived together for some time. Bentham was engaged with his pen and Burr with his books a greater part of the day ; but their hours of relaxation were regular and systematic, and then they entered into a free interchange of opinions. The guest was delighted with the extended views of legislation and jurisprudence which the host had taken and was fond to support, and the latter was edified by the shrewd remarks and more practical views of his friend, who had for many years been a practical as well as a theoretical statesman and lawyer. Bentham was only eight years older than his companion, and of course there could be no essential dissimilarity from difference of years. They enjoyed their classical and polemic interviews with a fine relish, and felt themselves mutually entertained and instructed by their social relations. Many sought and shared their society, for both had been sufficiently known to the world to be subjects of curiosity as well as of interest. Several of the lawyers and of the literati made an acquaintance with Colonel Burr, and expressed no common share of interest in his welfare. Among others, was the learned Rives, a lawyer of high standing at the London bar. From the machinations of his enemies, Colonel Burr was not suffered to stay in this retreat, on the island where freedom is supposed to be enjoyed in a higher degree than any where else. The government became alarmed, and although at

this time it must excite a smile, were apprehensive of his military reputation, and warned him that he could no longer reside under the British banners, and was requested to name the place he wished to be sent to. He, at first, requested to be allowed to go to France or Ireland. This did not suit the views of the ministry. He then proposed Russia or South America. These places were still more objectional. The ministry then suggested Heligoland as a proper situation. His answer was, the British nation has not power to carry me there alive. I will not go. Having become acquainted with the Swedish ambassador to the court of St. James, he obtained from him a passport to visit Sweden, and to this Lord Liverpool could not object. It seems the British ministry had the same fears of Colonel Burr, in 1809, that they had of Bonaparte after his capture. Heligoland is an island in the German ocean, more barren than even St. Helena. It is a rock, situate in an inclement region, that seldom feels one of the salubrious gales of Helena; and with but little more refinement among its few inhabitants than there is vegetation upon its surface. It is not only amusing, but extraordinary, that the British government, in their high and palmy state, when they had fought the battles of the Nile and Trafalgar, should fear the powers of a single individual, who was without followers or pecuniary means to raise a force. Their historians will never put the fact on record; it will, nevertheless, be true.

From England, after receiving for nearly two years the hospitalities of his friends in that country, for which he has ever expressed his gratitude, Colonel Burr sailed for Stockholm. Here he was received by

every courtesy, and moved in the first circles of taste and fashion. For six months or more, he enjoyed the society of those friends of liberty and talent, without an unpropitious occurrence.

From Sweden he departed with friendly and powerful letters to Germany, and through all the principalities and dukedoms he received the kindest treatment. The Duke of Saxe Weimer had been propitiated in his favour by a lady of distinction at Stockholm. The dutchess, in her saloon, treated the American with marked attention, and this gave him a passport among the fashionables throughout all Germany. He staid long enough in each country to study the character of the people.

From Germany he passed to Holland, and was received with kindness. He took great pleasure in studying the manners and habits of a people whose history he had read attentively. In this land, where liberty had been cherished for centuries, which was the retreat of those persecuted for politics or religion, in the days of the fagot and the stake, he found the chilling shadow of Napoleon stretched to a gigantic length. Its free institutions were dying under French influence. In the libraries of Amsterdam he spent many pleasant hours. He was quite at his ease here, for the good Dutchmen viewed him without suspicion or jealousy, and they could not conceive that a gentleman of such polished manners could be the great bandit the American public functionaries had represented him to be. They did not believe that he would break down their dikes or drink up the waters of their canals.

Colonel Burr left Holland to visit Paris. In this great city, although viewed by the government with jealousy, he was treated with every attention by persons in the literary and scientific world, and in Paris they make up no small share of the fashionable portion of society. Among those whose courtesies were most acceptable, was the far-famed Denon. This great man was above all prejudice. He was an admirer of all that was remarkable in mind or matter. The incidents in the life of Burr were familiar to him, and he was happy in an opportunity of being personally acquainted with one whose fate had been so singular. Denon was, at this time, director of the Napoleon museum, and gave his American friend free access to all the institutions under his control, and also to his own cabinet, rich in extensive collections of rarities of nature and art, particularly in Egyptian curiosities. In that city Colonel Burr found other friends, with whom he lived on terms of intimacy. His journal, kept at this period, the writer of this memoir has seen and examined. It is indeed a curiosity. It is a daily circumstantial account of his trials, vexations, sufferings, and pleasures. His expenses are given to a single franc. It is amusing enough to read these pages of domestic record, which extend to "Tray, Blanch, and Sweetheart, little dogs and all." There are, however, interspersed with these slipshod memoranda some acute commentaries on passing events, and beautiful flashes of sentiment. While he was amusing himself in this innocent manner, the Bonapartean police were watching him as one whose sole aims and ends were to commence revolutions, and to agitate nations by military wonders. The Duke of

Bassano was his friend, and, of course, he did not feel in the least apprehensive of any permanent evil.

He had now been so long absent from his country and his daughter, that he became uneasy, and taking leave of his friends in Paris, he reached England once more ; and thence taking a passport under an assumed name, sailed for the United States.

In the summer of 1812, Colonel Burr returned to this country. He came to Boston incognito, wishing to have a communication with his friends in New-York before he ventured to appear publicly. While in Boston, he recollected that among his officers at Westchester, there was a young man by the name of Fessenden, who was a man of worth and of confidence. Colonel Burr inquired for this officer, and found that he was still living, and he at once made a call on him, and inquired of him if he had been in the army, and being answered in the affirmative, Colonel Burr followed up his questions until he ascertained that he still had a strong affection for his commander, and then was apprised of his presence. Mr. Fessenden received him with open arms, and made his friend acquainted with the Rev. John T. Kirkland, the president of Harvard College, who received the Colonel with great courtesy, and made him acquainted with several gentlemen of distinction. After a short stay in Boston, Colonel Burr received satisfactory information that there were no existing difficulties in the way of his return to the city ; and he, after an exile of nearly eight years, found himself in the place of his early exertions in war and in peace. A few of the narrow-minded part of the bar were, at first, rather restive at his returning to his profession, and some-

thing like a combination appeared to be forming against affording him the usual comity in practice ; but the higher members of the bar would not come into any such league, and the others could not carry their proposition into effect. Among those who spurned at this conspiracy against an already persecuted man, was the late Cadwallader D. Colden, who filled a large space in the jurisprudence of his country at that time and since. The manners of Colonel Burr had not changed by absence ; they were unobtrusive and courteous. He mingled but little with society in general ; still his house was a hospitable retreat for many of his former friends. His business kept him constantly engaged ; and if he was not as much in courts as formerly, he was constantly consulted in almost every land cause that was on the docket. He was familiar with the records, and was well acquainted with the ancestry of the living generation, and, of course, he knew the tenure by which almost the whole of the landed property in city and state was held, and he has often profited by this knowledge.

In the year 1814 Colonel Burr lost his daughter, Theodosia Alston, wife of Mr. Alston, governor of South Carolina. She was an accomplished woman, possessing fine talents. She was the only child of her parents, and had been educated with every attention by her father, her mother having died when Theodosia was very young. Colonel Burr having but this one child to educate, determined to pursue a course of his own. After the first rudiments in her vernacular, he left, for a while, her English education to what might be denominated chance. He begun with her in Latin, Greek and French, in the Pestalozzi manner, although

the name of that great philosophical schoolmaster had not then been known in this country. He preferred this course to the one in which he was taught. She had acquired a knowledge of the meaning of nouns, adjectives, and the roots of verbs, before her grammar was resorted to, and when it was opened, it was to help the pupil out of some difficulty, not to create one by an unmeaning sentence, committed to memory at first, when it could only be a mere matter of memory. He had masters for her in every branch, but attended himself to every lesson when he was near her. At the age of seventeen she was married to Mr. Alston, of South Carolina. At this time she was considered as one of the most accomplished young ladies of the age. She was not only well acquainted with the classics, but also with the modern languages. This extent of education was uncommon in her time; female education has been on the advance ever since. She was considered as a prodigy among the young ladies of that age. Not only the mental faculties of the daughter were carefully cultivated by the father, but a moral and physical discipline was enforced that nerved her for all the accidents of life. She was taught corporal and moral bravery, in the same lesson. Though small and delicate in her person, she had the spirit of a Roman matron. In South Carolina she was at the head of fashion, and sustained herself with great dignity, without hauteur, caprice, or vanity. She was considered as a model among her countrywomen in that section of the country on her first arrival, and the matron fulfilled the promise of the young lady. She had a son, who lived until he was fourteen years of age, to whom she was not only most tenderly

attached, but to whom she devoted a great portion of her time. He was educated at home; and that home was supplied with the best of teachers; but she superintended every branch of learning he was directed to acquire. He was, of course, in advance of his years, the pride of his parents, and the admired of his friends. He was not destined to grow to manhood. To secure his health, his father, in the warm season, was in the habit of sending him and his mother to New-York, to pass the time, until the wholesome breezes of autumn had begun again to blow over the low grounds of his native state. This was continued until his grandfather visited Europe in 1807, when he went to reside, in the hot season, with his mother, on the island generally called so healthy, in the harbour of Charleston. Here he took the fever of that climate, and died. It was a sad blow to his parents, and the grandsire felt it on his naked heart. But his daughter was living: he suppressed a sigh, and all the pulses of his heart were made again to move in obedience to his philosophy. No one ever saw him moved, for he was always a man of iron; but it were in vain to tell us such men do not feel. They do most intensely feel; but not like other men. They have no ordinary modes of relief; no tears, no sighs, no bursts of frenzy to exhaust their feelings; but they learn to suppress their agonies, and their calmness is often taken for apathy. The death of the grandchild was not all that Colonel Burr had to suffer. His daughter was in ill health, and he was anxious to have her visit him in England, and go with him to Scotland, to try the change of scene. The letters which the father wrote to the daughter are lost, but some inference may be drawn of the strength of his affec-

tion, and the depth of his solicitude, by referring to letters which Colonel Burr wrote to Dr. Hosack in relation to his daughter.

LONDON, 10th Nov., 1808.

DEAR SIR—My daughter's letters, written since her return from Ballstown, contain the afflicting intelligence that she has found no relief from any one of her complaints. I have consulted Dr. Lettsom, and he unites with me in opinion, that the only chance of saving her is by a speedy and thorough change of climate and habits—that is, a voyage to England. He also expects much from the sea voyage. His letter is enclosed; but he has expressed himself much more strongly in our conversation than in his letter, having been restrained, it seems, by professional delicacy toward you. Of the climate of this country, as compared with that of ours, he knows nothing, because he knows nothing of the latter. You and I, however, can vouch for its superiority. He offers, and I am sure with sincerity, professional aid and friendly attentions.

Feeling a strong conviction that her recovery, and even her life, depend on the prompt adoption of this measure, and being persuaded, from what passed between us on the subject in April, that it will meet your approbation, I intreat and conjure you to promote it without loss of time. By this conveyance I write to ym daughter to come immediately to town to confer with you. A winter passage may be rude, but it will be short. She is always better at sea; and, judging from my own experience, this climate cannot fail to

be beneficial to her. The benefit of my presence and attentions you can estimate.

After you shall have conversed with her, and adjusted the plan of her voyage, I beg you to write to Mr. Alston in such terms as may convince him of the expediency and necessity of the measure, and reconcile him to it. Show this letter to Theodosia, and act in concert with her. You are aware that this is the most interesting concern of my life. Do by me as I should do by you.

Your affectionate friend and servant,
Dr. HOSACK. A. BURR.

LONDON, 25th of March, 1809.

Theodosia writes me that she is much better ; but I do not believe her. If, however, it should be true, she is the better able to cross the Atlantic, and go with me to Scotland, where she will escape the heat, and be among the most hospitable people I have ever known.

Your affectionate friend,
Dr. HOSACK. A. BURR.

On his return to this country, after having been more than five years in Europe, his daughter embarked from Charleston, to make him a visit in New-York. She sailed in a privateer built vessel, and which was never afterwards heard of. For a long time the most agonizing fears were entertained that the vessel had been taken by pirates. They swarmed at that time upon the southern coast of our country, and all about the West Indies ; but after months of awful suspense, he had, heaven forgive the expression, the happiness to think she had been buried in the "fathomless abyss."

On going to Europe, in 1807, Colonel Burr had left his most valuable papers with his daughter, but these were lost with her. This was truly a loss to the historian, as he had been careful in filing documents that contained the facts connected with every event of his life.

The income of Colonel Burr, from his professional labours, was large, and he might have accumulated a fortune in a few years, but his liberality was too great to think of making himself rich. He preferred the pleasure of doing good with his earnings to that of accumulation. Many of the necessitous were around him, and received from him as though he had been a guardian of some large patrimony intrusted to his care for their benefit. While indulgent to others, he was hardly just to himself, living most abstemiously, and sleeping on a settee-couch, uncomfortable enough for a friar of La Trappe. His good nature was often abused: domestics are not always honest, and he was not suspicious enough to look after them. He had not only those swarms of consuming locust about him, but frequently some decayed gentlemen, still highly respectable, to whom he was most kind and courteous, always treating them with a delicacy which increased in proportion to their misfortunes. For many years the celebrated Luther Martin was his guest. This gentleman had, for many years, been at the head of the bar of Maryland, and had also filled a great space in the political history of that state, and of the United States, from the first dawn of his manhood. He had been not only a profound and learned lawyer, but had possessed as much moral bravery and independence as knowledge of the laws of his country. When

Colonel Burr presided in the trial of Judge Chase, Luther Martin was counsel for the respondent. In this trial he displayed vast resources of mind in every argument, and had in readiness every precedent the books contained. When Colonel Burr's own trial came on at Richmond, he availed himself of the services of Luther Martin, then in the maturity of his judgment and in the strength of his memory. Colonel Burr thought highly of the services Judge Martin rendered him in his critical situation, and felt a sense of gratitude to his counsel for his friendly and strenuous endeavours to assist him. After many years from this period, Colonel Burr found his friend had suffered by the ills of life ; many of the strong ties of blood and kin had been severed by death, and his fortunes had become dilapidated by a profuse generosity and want of rigid economy. In addition to this, the powers of his mind had become impaired, and old age had crept on him. In the meridian of his days, and onward, he had made free use of stimulants, and now had come to the resolution to observe entire abstinence from all alcohol. Human nature cannot always bear such changes ; body or mind sinks under them, and often both suffer irreparably. Colonel Burr, on being made acquainted with the precise situation of his old friend, offered him his house as an asylum. Here he lived several years, with every attention and with every comfort his infirmities would allow. He had a fine room and a body servant ; ate, read, slept, wrote, or walked when he pleased. One of the greatest pleasures of this veteran of the bar, was to visit, for several hours each day, some one of the courts in the city, to hear from a new generation those forms in debate he once

loved so much. This course he continued until he was suddenly called to quit the world, in whose affairs he had taken so large a share. This invitation was an act of liberality that even the enemies of the subject of this memoir could not refrain from praising; and they often spoke of the delicacy of the manner in which all this was done, as surpassing the merits of the deed itself.

For more than thirty years Colonel Burr has been assailed and abused in public journals, at home and abroad. Some of them have misrepresented him from ignorance of the facts; others from party purposes or malicious feelings. It is sometimes amusing to read some of these misrepresentations. It is not Mr. Wirt alone who has gained fame by indulging the imagination on the wonderful sorceries of Colonel Burr. Others have given him the eye of the basilisk, from whose glance it was impossible to recede, and that when once fixed on an object the destruction of it was certain. They have represented his voice as sweeter than that of the Sirens, and that he used this charm as successfully as the fabled enchantresses. Even his gait had something of necromancy about it, and reminded these lovers of the wonderful of the stealthy step of Tarquin approaching the couch of the chaste Lucretia. In their legends, he was more successful in his intrigues than Apollo, for no Diana could interfere between him and the object of his pursuit. These exaggerations and fictions often reached his ear, but did not disturb him. He took no pains to make explanations or excuses. When asked in a proper manner for his opinions, he always gave a direct and prompt answer to the inquirer, but never permit-

ted any one to put a supercilious interrogatory to him.

Colonel Burr must be aware that softer breezes of public opinion are now beginning to be wafted over the fields of his fame. He sees that enmities once inveterate have become placable; and that if some of the aged will still pertinaciously adhere to former opinions, the rising generations, the hopes of the country, are, with a searching mind, sitting in judgment, and reversing the erroneous decisions of their fathers. Grave historians have come out and placed on the shoulders of others the sins which he has been made to carry for nearly thirty years. The History of Louisiana, by the venerable Judge Martin, written with candour and talent, has blown to the winds all the farce got up by General Wilkinson, which he began with the cry of treason. *There is a Being who turns and overturns, until he whose right it is shall reign.* The ponderous tomes of Wilkinson, in his attempted proofs of patriotism, have been used by Francis Xavier Martin to show that the general possessed no such virtue.

Colonel Burr is now almost an Octogenarian. The numbness of age has crept over his limbs, but he still stands erect, ready to meet with firmness whatever next may come. If he has long since given up the seals of political trust, and if the curls of beauty, like those of Omar, have fallen from his head, still the fire of his eye has not gone, nor the powers of his understanding destroyed. He waits, with serenity, his end, with a perfect knowledge of the stern requisitions of Nature, and the necessity of a perfect obedience to her decrees. With the Roman Cato he reasons upon

the doctrines on the longings after immortality, without any belief of the rights of self-destruction to reach it, with the certainty of never having interfered with the rights of others. He never laboured to make a disciple, or to reproach the religious faith of another. If this is not enough for those who follow the creed of his fathers, it should certainly free him from the charge of being an enemy to the Christian faith. He has suffered the ostracism for years, and now asks for no place on the callendar of the saints, but only to be put upon the lists of men.

A P P E N D I X.

THE identical journal kept by Benedict Arnold has been preserved. It is now in rather a dilapidated state. It was left by Arnold at West Point, when he fled, on hearing of the capture of Andre, and was found among his papers by the late Judge Pierpoint Edwards, of Connecticut, who was appointed to administer upon the goods and estate of Arnold, his treason making him dead in law. There cannot be the slightest doubt of its being an original document, from the history of its preservation, from its antiquated appearance, from internal evidence, and a comparison of hand-writing, which we had an opportunity of making, from finding several letters from Arnold in the possession of those well acquainted with his chirography. It is the writing which was common in that day among well educated men, holding, like that of Washington, and also of Hancock, the middle style between copy and running hand. We shall make some extracts from the manuscript, beginning 27th of September, 1775. Some of the leaves of the manuscript are wanting.

Wednesday, 27th Sept., 1775.—Major Meigs, with Captains Hanchet's, Ward's, Dearborn's, and Goodrich's companies, marched at noon. Sent down a

number of boats to bring up all the flour from below. Wrote to my sister Hannah. Sent to the commissary to forward on all the batteaux, &c.

Thursday, 28th Sept., 1775.—The whole detachment marched, except Scott's, M'Cobb's and Williams' companies, who are detained for batteaux to be mended, oars, paddles, &c.

Sent for Colonel Enos and the company to come up from Colburn's, with all the men and boats. Ordered the sick and criminals on board the Broad Bay, Captain Clarkson, with stores, &c.

Friday, 29th Sept., 1775.—Captains M'Cobb and Scott's company marched about 10, A. M. At noon, left Fort Western in a birch canoe for Fort Halifax. Left Colonel Enos, with Captain Williams' company, to bring up the rear, with the provisions behind. Our canoe proves very leaky. Stopped at Vasalburgh, eight miles above Fort Western, and changed her for a periaugua. Lodged about 4 miles short of Fort Halifax. Course of the river, from Fort Western to Halifax, is N. N. E. eighteen miles.

Saturday, Sept. 30th, 1775.—At 6, A. M., crossed the Three Mile Falls, and at 10 arrived at Fort Halifax, where I found Captains Dearborn's and Goodrich's companies just over the falls, which are about sixty rods over. Good carrying place. At 11, A. M., dined at Crosier's, and hired him, with his team, to carry our baggage over the land, about five miles, to avoid the ripples, or quick water, above the falls, which are very dangerous and troublesome to pass. At 5, P. M., left the land, and proceeded up the river one mile and a half, where we lodged in the woods, with Major Meigs and his division.

Sunday, Oct. 1, 1775.—Mounted the river at about twelve miles, over several rips and swift waters. Dined at one Westin's, three miles before Sureheagen Falls. At 4 P. M., reached Sureheagen Falls, which we passed, and went up the river five miles, where we lodged at one Widow Warren's. Great part of the way, small falls and quick water.

Monday, Oct. 2, 1775.—At 10, A. M., arrived at Noridgewalk Falls, six and a half miles from where we lodged. Great part of the way swift water and rapids. The land, from Fort Western to this place, appears, in general, very good and fertile, and is thinly inhabited. Here we leave the English settlements, no inhabitants living above the falls, which, by the best estimation, are fifty miles from Fort Western. Here I overtook Captain Morgan, with his division, who had just got his baggage over the carrying places, which is about fifteen hundred yards over a high hill.

N. B. Course from Fort Halifax, over the Ripple, N. distant five miles. From Ripple to Sureheagen Falls very crooked, N. distant sixteen miles. From Sureheagen Falls to Noridgewalk, S. W. five miles, and N. W. 7.

Tuesday, Oct. 3, 1775.—The Rifflars proceed for the great carrying place, whom Thayer's and Hubbard's companies employed in getting over their baggage. Examining bread, great part of which is damaged by the boats leaking, and the difficulty of passing the rapids, where it is impossible for people unacquainted to get up the boats without shipping water. Here is some small vestiges left of an Indian town, destroyed by the English about 50 years since, viz. the foundation of an old church and altar, the monu-

ment over St. Francis, the founder of the church; and the whole tribe, we are told, are extinct, except two or three.

Wednesday, Oct. 4, 1775.—Carpenters employed in repairing batteaux, and the several companies in carrying over their provisions, some of which prove unfit for use. Colonel Grant's division proceeded forward. Major Meigs's division arrived with Colburn's.

Thursday, Oct. 5, 1775.—Companies employed as the preceding day.

Friday, Oct. 6, 1775.—Major Meigs, with his division, went forward. Colonel Enos, with the last division, arrived.

Saturday, Oct. 7, 1775.—The last division employed in examining their bread, part of which is wet and unfit for use, and carrying the baggage and provisions over the Portage.

Sunday, Oct. 8, 1775.—We have not been able to get all our baggage over the portage until this morning, though we have constantly had two sleds going with oxen, owing to the height of the hill and the bad road. A storm of rain prevents our proceeding this day.

Monday, Oct. 9, 1775.—Struck our tents, carried our baggage across the portage, embarked, and proceeded up the river about three miles, N. N. E. Here the river takes a remarkable turn to the E. N. E. about three quarters of a mile. and then turns W. by N. about three quarters of a mile more. We crossed the elbow over land, being about thirty rods, which saves more than a mile of rapid water. Here the river takes its proper course, about N. At 12 o'clock, passed the seven-mile stream. At 3, dined

at one of the islands, and at 5 encamped, with Captain M'Cobb, on another island, within two miles of Carratunk Falls. The whole distance this day 16 miles. Course N. N. E. easterly. The water very rapid. The land, from the mouth of the river to Carratunk Falls, appears level, and in general fertile, and tolerably well wooded, with some oak, elm, ash, beech, maple, pine, hemlock, &c.

Tuesday, Oct. 10, 1775.—At 9, A. M., arrived at Carratunk Falls, the fall of which is about fifteen feet. The portage near fifty rods over. We proceeded up the river about five miles against a very rapid stream. Course about N. Here the mountains begin to appear on each side the river, high and level on the tops, and appear well wooded. The river, from Noridgewalk to the Great Carrying Place, is very narrow in width, but in general about four hundred yards, and full of a great number of small islands, which appear very fertile land. We ascended the river this day about twelve miles; in general very rapid and shallow water. We encamped late at night, much fatigued.

Wednesday, Oct. 11, 1775.—We embarked early this morning, and proceeded up the river, the stream very rapid indeed. At 10 arrived at the Great Carrying Place, which is very remarkable. A large brook, which comes out of the first lake, emptying itself into the river just above. When abreast of the carrying place in the river, you will observe at about four hundred yards above you a large mountain, in shape of a sugar loaf, at the foot of which the river turns off to the eastward. This mountain, when you are at the carrying place, seems to rise out of the midst of the river. Here I overtook Captain Morgan and his di-

vision, Colonel Greene and division ; part of each had proceeded as far as the second lake. Major Meigs arrived just before me. Met Lieutenant Church, who had been at the Dead River, on a survey, and reports as follows : From Kenebeck, over the portage to the first pond or lake. Course W. 27° N., distance three and a quarter miles. Rising ground, bad road, but capable of being made good. Over the first pond half a mile, which pond is one and a quarter miles long. Here our people caught a prodigious number of very fine salmon trout, nothing being more common than a man's taking eight or ten dozen in one hour's time, which generally weigh half a pound a piece. The second portage is W. 6° N. half a mile and twenty rods. Very level but rough roads. The second pond is in length, from N. to S., two and a half miles long, and half a mile wide. The third carrying place is one and a quarter miles and forty rods. The road very bad. Course west 10° N. The third pond is in length, from N. to S. three miles. Width, two miles. Course over W. by N. The fourth and last portage is west twenty degrees north ; distance two and three quarter miles and sixty rods. The first part of the road tolerably good ; the last mile a savanna, wet and miry, about six or eight inches deep.

Thursday, October 12th.—Lieutenant Steel returned from Chaudire Pond, and says he discovered no Indians ; that the Dead River, from the last carrying place, he judges to be eighty miles, most part of the way a fine deep river, the current hardly perceptible ; some few falls, and short carrying places, and rapid water ; the carrying place from the Dead River to

Shadine Pond, about four miles. Very good and even ground most part of the way, and plenty of moose and other game on the river.

This day employed Captain Goodrich's company in building a log house on the second carrying place, to accommodate our sick, eight or ten in number, whom we are obliged to leave behind. Also a party at the east side of the first portage to build a small log house for men and provisions.

Ordered Lieutenants Steel and Church, with twenty axemen and a surveyor, to Chaudire Pond, to clear the portages, and take a survey of the country; Lieutenant Steel to go down the Chaudire, near the inhabitants, and examine the falls, portages, &c., and return to the pond as soon as possible. Our men are much fatigued in carrying over their batteaux, provisions, &c., the roads being extremely bad; however, their spirit and industry seem to overcome every obstacle, and they appear very cheerful. We have had remarkably fine weather since we left Cambridge, and only one death has happened, and very few accidents by water; which is the more remarkable as there seldom passes a season without some people being drowned in the Kennebeck, which is very difficult and dangerous to ascend.

Oct 13.—This morning despatched our Eneas and a trotter Indian with letters to some gentlemen at Quebec and to General Schuyler. Sent a white man with them, who is to proceed as far as Sartigan; and after discovering the sentiments of the inhabitants, and procuring all the intelligence he can, is to return to us at Chaudire Pond, where we expect to meet him in about

seven or eight days. Two divisions have this day reached the Dead River.

N. B. The foregoing transmitted to General Washington.

Saturday, October 14th, 1775.—Left our encampment at 4 P. M., carried over the portage, which, according to Lieutenant Charles Saroy, is W. 1° N. half a mile and 20 rods; ground low. We soon arrived at the second pond, which makes as desolate an appearance as the first does beautiful, the lake being very irregular, long and narrow, the trees all dead and full of moss, the water very thick and muddy. Our course over it, for about half a mile, was west, then stood N. by W. about three quarters of a mile, up a narrow creek, or arm of the lake. Our course over the third portage was W. 10° N. one and three-eighths of a mile. Road extremely bad, being choked up with roots which we could not clear away, it being a work of time. Reached the third pond, or lake, where the prospect is very beautiful and noble, a high chain of mountains encircling the pond, which is deep, clear, and fine water, over which a forked mountain, which exceeds the rest in height, bearing N. W., and covered with snow, in contrast with the others, adds greatly to the beauty of the scene; it being late, we made no attempt to cross but encamped for the night.

Sunday, Oct. 15th, 1775.—At 10 A. M. we embarked and proceeded over the lake; our course was N. W. This lake appears to be three and a half miles long, and two and a half broad, very uniform, a small elbow running into it from the S. E., on the west side of which it empties itself.

We entered on the portage at one o'clock, P. M.

We ascended the hill about one mile, the portage conducting us through the gap, or breach in the mountain. After descending the winding of the hill a mile, we came to a low savanna, where we encamped for the night.

Monday, Oct. 16th.—Early in the morning we continued our route, over the savanna, which is divided by a small wood, not exceeding a hundred rods, the road excessively wet and miry, being often nearly up to our knees ; but, thanks to our boots, we got over without being much wet. Our course was nearly W. 20° N. two and three quarter miles and sixty rods. Here the men had a most fatiguing time to get over their batteaux, baggage, &c. At half after one P. M. we arrived at a small creek, where we landed one batteau, and after rowing about one mile arrived at the Dead River, which is about sixty yards wide, uniformly deep, and gentle in its current. Prior to which ordered ten men of each company of Major Meigs' division to work on the roads, that the rear might pass with less difficulty. Continued our voyage up the river. We were now near the large mountain mentioned the preceding day. Here the river, by its extraordinary windings, seemed unwilling to leave it ; two hours had passed away, and we had gained nothing in our course ; but at last, by slow degrees, it became more regular, and turned to its proper course. When we had got three leagues we found a small fall : the portage was forty yards. The course of this three leagues was nearly S. W. Here we passed Captain Morgan's company, and continued our course two leagues, where we found an Indian house. One league further up we overtook Colonel Green and division,

with whom we encamped, at 8 P. M., much fatigued. Our course was about W. N. W.

Tuesday, Oct. 17th.—Finding Colonel Green's division short of flour, (great part of their bread being damaged,) ordered a lieutenant, two sergeants, and twenty-nine privates out of each company under the command of Major Bigelow, to return and assist the rear in bringing up their provision, the remainder of the companies to be employed in making up their cartridges. Caught a number of fine trout in the river. At 12 o'clock Captain Morgan's division passed us, and went on for Chaudire Pond.

Wednesday, October 18th, 1775.—At 10 A. M. Captains Goodrich's and Dearborn's companies arrived: gave orders for their making cartridges, as well as those who were up. At 5 P. M. Major Meigs arrived with the last of his division.

Thursday, October 19th.—Small rains the whole of this day. At 3 P. M. the storm abating, Major Meigs went forward with his division. We soon after followed, and proceeded on our way about two and a half leagues to the second carrying place. Our course was various; part of the way was S. W., and gradually shifted to S. E., with many turnings and windings; we passed 6 small rips, very swift water, and shallow, which brought us as near the mountain as we had been at any time before. The course over this carrying place is S. 35° E., distance 15 perches. Night coming on, and the rain increasing, we encamped on the portage, and caught a plenty of trout near the falls.

N. B. Rained very hard all night. The whole country, since we came into the Dead River, appears a flat for a great distance to the northward and east-

ward, tolerable land, and some part well wooded, but in general covered with spruce, cedar, fir, birch, &c. ; the soil cold, and, in general, barren.

Friday, Oct. 20.—Rainy morning. At noon Major Meigs' division came up, and being very wet, and the storm continuing, they proceeded on, intending to encamp early. Continues raining the whole of this day : wind to the southward.

Saturday, Oct. 21.—Storm continues, though something abated. A prodigious fall of rain for two days past has raised the river upwards of three feet, which, except the loss of time, we esteem in our favour, as the river was low before. At 7 A. M. embarked, and proceeded up the river three leagues, where we came to a small fall of water, the portage over W. N. W. about ten rods. About half a mile higher up came to another fall more considerable ; portage over about twenty-six rods, course W. N. W. Continued our route up the river for about half a mile to another fall, the portage 75 rods, course over W. N. W. About ninety rods higher up met with a fourth fall, very considerable, and long ; portage over W. N. W., distance seventy-three rods. Here we overtook Captain Morgan and his division ; but, as his encampment was bad, proceeded about one mile higher up, very wet and much fatigued, having paddled up near four leagues through the rain, which continued incessantly. It was now quite dark, so that we had little time to encamp, and it was near 11 o'clock before we could dry our clothes and take a little refreshment, when we wrapped ourselves in our blankets, and slept very comfortably till four in the morning, when we were awakened by the freshet, which came rushing on us like a torrent, hav-

ing rose eight feet perpendicular in nine hours ; and before we could remove wet all our baggage, and forced us from our comfortable habitation. Very lucky for us we had a small hill to retreat to, where we carried our baggage, and passed the remainder of the night in no very agreeable situation.

Sunday, Oct. 22.—This morning presented us a very disagreeable prospect. The country round entirely overflowed, so that the course of the river, being crooked, could not be discovered, which, with the rapidity of the current, renders it almost impossible for the batteaux to ascend the river, or the men to find their way by land, or pass the small brooks, arms of the river, &c. Add to this, our provisions almost exhausted, and the incessant rains for three days have prevented our gaining any thing considerable, so that we have but a melancholy prospect before us ; but in general in high spirits. At 9 A. M., Captain Morgan, with his company, passed us up the river, and at 5 P. M., Major Meigs, with part of his division, came up with us. Were employed the whole of this day in drying our baggage, &c. ; the whole of which was some time under water last night, and very wet.

Monday, Oct. 23d, 1775.—At 7 A. M., Captains Smith and Hendrickson, and Major Meigs, with his division, came up, and passed on. At 10 A. M., embarked, and proceeded up the river. The stream, by reason of the freshet, very quick. In about three miles we came at the crotch of the river. Our course was about W. Here we found that the landmarks had, by mistake, taken the S. W. or wrong branch, which we rowed up two miles, and sent men ahead to inform them of their mistake, and direct their

march. This mistake occasioned a detention of the batteaux and whole division near two hours. When the whole were formed, we proceeded up the river against a very rapid stream about three miles, to the seventh carrying place. Course over N. 35° E., distance seven perches. Here we had the misfortune of oversetting seven batteaux, and losing all their provisions. Here the whole division encamped. The river continues high and rapid; and as our provisions are but short, and no intelligence from Canada, I ordered a council of war, summoned of such officers as were present.

* * * * *

Tuesday, Oct. 24.—Sent back the sick, twenty-six in number, and ordered Colonel Green and Colonel Enos to send back as many of the poorest men of their detachment as would leave fifteen days provisions for the remainder, who are to follow on as fast as possible. Captain Hanchet, with fifty men, set out early for Chaudire Pond, in order to forward on provisions from the French inhabitants of Sartigan, for the use of the army. Despatched the division forward, and at noon set forward. Went about seven miles—very rapid water—when we came to two falls. The portage over the first was N. 20° W. 12 perches. The second, which was about one hundred yards above the first, was N. 12° , E. 6 perches.

N. B. This is the tenth carrying place since we entered the Dead River. We are now about twenty miles from Chaudire Pond. We proceeded about one mile higher up, when night coming on, and the rain

increasing, which had begun about an hour before, we encamped. It continued raining and snowing all night. At 4 in the morning the wind changed to N., and it cleared up. About two inches snow on the ground.

Wednesday, 25th Oct.—We embarked early this morning, and proceeded up against a rapid stream. About one and a half miles came to a portage of about thirty rods. Course about N. W. The fall very inconsiderable. About one mile higher up found another fall; the portage over one hundred rods N. W. Water continues rapid half a mile, when we entered the first lake, which is about half a mile wide, but contracts itself in several places. We rowed about two miles, where the lake is not more than eight rods wide, when it again opens to its former length. One mile and a half brought us to a marshy ground. Passed on in a small rivulet for half a mile, which brought us to a lake about five miles long and three quarters wide. Several points make out into it. All these lakes are surrounded with a chain of prodigious high mountains. At the cut of this lake, which lies N. and S., we found it contracted to about three rods wide, for a short distance, which brought us into a small round pond, or rather the west end of the lake. Here we were a long time at a loss for the portage. At length we found a small brook, which we entered, and towed up about one and a half miles, with much difficulty, being obliged to clear away the drift logs in many places. Snowed and blowed very hard, the wind at N. all this day. In the last lake the sea ran so high we were obliged to go on shore several times, to bail our batteaux, which was with much difficulty kept above the

water. Night coming on, and we being much fatigued and chilled with the cold, we were obliged to encamp without being satisfied whether we were right or not, as our guides gone forward had made no marks, or we had missed them. We made it 11 o'clock before we could get comfortable to lie down. The whole distance, this day, appeared to us near fourteen miles; but as we rowed against sea and wind, we might probably be deceived three or four miles in the distance.

Thursday, 26th Oct.—Early in the morning despatched one of my men up a small stream, to see if he could discover any signs of a portage, while we got breakfast and packed up our baggage. He returned without making any discovery. We continued our route up a narrow and very crooked and rapid brook about three and a half miles, which brought us to a portage of twelve perches. Course, W. 10° S., to a small lake about eighty rods long and thirty broad. In a few minutes we arrived at another portage. Course, W. 35° N., distance, three quarters of a mile and fifty-three rods. Carried over, and entered another lake half a mile in length. Another carrying place of seventy-four rods, course, W. 5° N., brought us to another lake of about half a mile long. Another portage of forty-four rods, course, W., brought us to the last lake, which is one and a half miles in length, and half a mile broad. At 4 P. M., entered on the great carrying place, into Chaudire Pond. The length of the portage four miles and sixty rods. The first two miles about N., one and a half miles W. 10° S., then N. to the brook. About two miles of the first part of the portage you ascend,

which brought us to the height of land, at an elevation of about 35° ; from thence we then descended the hill to the brook. We advanced on the portage about three miles this evening. At dark much fatigued. The whole of our baggage did not arrive until very late, and we made it near midnight before we could pitch our tents. The whole distance this day about ten miles. All these small lakes have a communication with each other by a small brook or river, and between most of them are considerable falls, which occasion so many portages.

N. B. Sent back Nehemiah Gitchell to pilot up the rear. Here we met twenty men of Lieutenants Steel and Church's party.

Friday, Oct. 27.—Early we continued our march over the portage. One mile brought us to a beautiful meadow, quarter of a mile more to the stream, which we entered at 11 o'clock, bidding adieu to the southern waters. We followed this river, which is about two rods wide, about ten miles, which is very crooked, and turns all points of the compass. We met many obstructions of logs, &c., which we were obliged to cut away. On this stream we met Lieutenants Steel and Church, with one Jakins, whom I had some time since sent down to the French inhabitants. He left Sartigan the 22d inst., and says the French inhabitants appear very friendly, and were rejoiced to hear of our approach; that there are very few troops at Quebec. Governor Carleton, at Montreal, and one small frigate at Quebec. At 4 P. M., we entered the Chaudire Pond, or rather Lake Majantuk, which is in length, from N. to S., about thirteen miles, and three or four wide. We rowed on about three miles, to the east

side, and encamped. Here we found a very considerable wigwam. We waited here for the arrival of Captain Hanchet and sixty men, who left the carrying place with us to come on by land. At about sunset we discovered them on a point of low land, on the E. side, about two miles from us. I immediately sent all the batteaux for them, who discovered them on a low, marshy ground, to gain which they had waded two miles, through water to their waists. This error was occasioned by their endeavouring to keep the stream, whereas, they should from the carrying place have kept on the high land, and steered on about N. by E., or N. N. E., which would have brought them to the lake, clear of the sunken grounds. It was near midnight before all the men were towed over, as the batteaux were obliged to go three or four times each.

Saturday, 28th Oct.—Despatched one Hull to Colonel Enos, and the rear division, to pilot them up. Wrote his Excellency General Washington, and enclosed the letter to Colonel Enos, with orders to forward per express. Captain Hanchet, with fifty-five men, marched on at 6 o'clock; at 7 embarked with Captain Oswald, Lieutenants Steel and Church, and thirteen men, in four batteaux and a birch canoe, being resolved to proceed on to the French inhabitants, and, at all events, to send back provisions to meet the rear, who are at a very short allowance of provisions, and the men much fatigued, and some sick. We paddled on briskly, and at 10 A. M. reached the north end of the lake, where the Chaudire takes its rise, course N. by E. 13 miles. Went on shore, made a fire, and waited for the rear batteaux, who were nearly 4 miles astern of us. At 11 entered the Chaudire, which is very ra-

pid, full of rocks, and dangerous, and the more so as we had no guides. We lashed our baggage to the boats, and the current carried us down the stream at the rate of eight or ten miles an hour. After having gone about fifteen miles we came to a very long rapid, in which we had the misfortune to upset and stove three boats; lost all the baggage, arms and provisions of four men, and stove two of the batteaux to pieces against the rocks. But happily no lives were lost, although six men were a long time swimming in the water, and were with difficulty saved. This misfortune, though unfortunate at first view, we must think a very happy circumstance, on the whole, and a kind interposition of Providence; for no sooner were the men dry, and we embarked to proceed, but one of the men who was forward cried out a fall ahead, which we had never been apprized of, and had we been carried over, must inevitably have been dashed to pieces, and all lost. We soon found the portage, which is one hundred and forty-six rods, course E. 30° N.; and after carrying our baggage over it, entered again on the river, but with more precaution than before; and after going about half a mile discovered more dangerous rapids. Went on shore and examined them, and finding they were near, and night coming on, made no attempt to pass them, but encamped, and divided our provisions, which amounted to half a pound of pork and two pounds of flour to each man for five days.

Sunday, 29th Oct.—At 7 A. M. embarked in two batteaux and a bark canoe, and eight men. We had not proceeded far when the canoe, by running against the rocks, sprung a leak, and could not proceed; the

men took their land tacks on board. We proceeded this day about forty miles; found it less dangerous than before, as the river had widened near * * * *
 * * twenty rods over in general, but still very difficult to pass. The wind at E., and some snow, renders it very cold.

Monday, 30th Oct.—Early this morning embarked, and proceeded down the river about ten miles, when we came to rapid waters, filled one of our batteaux, but luckily lost nothing. Here we were obliged to lower down the stream by our painters. About two miles lower we came to falls and a portage half a mile over, course N. Here we met with two Penobscot Indians, who appeared friendly, and assisted us over the portage. Two miles lower down brought us to another portage of about fifteen rods. Three miles further brought us to the crotch of the river, where the De Loups enters, which is about seven rods over. Four miles further brought us to the first house on

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THE following are the documents which distinctly support the statement made on page 85 of the foregoing memoir.

To the Editor of the National Gazette.

WILMINGTON, Dec. 6, 1830.

SIR—Our attention was first drawn to the writings of the late Thomas Jefferson, by the proceedings in the senate of the United States, on the 28th of January last, in which a charge, affecting the character of our father, the late James A. Bayard, was met and refuted.

In a subsequent part of the work, at page 521 of the same volume, there is another statement, more offensive and equally groundless, which the duty we owe to the memory of a parent would not suffer us to pass over in silence. We have therefore to request of your kindness the publication of the remarks in the senate, together with the enclosed documents, which would have been sooner given to the public but from the delay necessarily incident to procuring some of them. They relate to a transaction which forms part of the history of the country, and we feel confident that their publication is all that is requisite to protect

the reputation of our father against such calumnies, let the source be what it may from which they emanate.

Respectfully, your obedient servants,
RICHARD H. BAYARD,
JAMES A. BAYARD.

MR. FOOT'S RESOLUTION.

The senate resumed the consideration of the resolution moved by Mr. Foot, respecting surveys of the public lands.

Mr. Benton being entitled to the floor—

Mr. Clayton said, that he desired the permission of the gentleman from Missouri, (Mr. Benton,) who was entitled to the floor, to call the attention of two of the honourable members of this body, Mr. Smith, of Maryland, and Mr. Livingston, of Louisiana, to a passage in a book which had been cited in this debate by the senator from South Carolina, (Mr. Hayne,) as authority on another subject. He did not rise for the purpose of discussing the resolution itself. In the wide range of the debate here, the north-eastern and southern sections of the country had been arrayed against each other. He listened to the discussion without any intention of participating in it, while the state which he had the honour in part to represent had escaped unscathed by the controversy. Though favourable to the resolution, as a mere proposition to inquire, he felt but little interest in such contentions between the north and south; and his only desire in relation to that subject, was, that the warmth of the

discussion might have no tendency to alienate one portion of the country from the other. But his attention had been called by a number of members of this house, to a passage in the same book, another part of which had been referred to by the senator from South Carolina. That passage charged an illustrious statesman, who formerly occupied the seat of a senator here, and whose memory and fame were dear to himself and to the people he represented, with atrocious corruption, of which he was convinced that great and good man could never have been guilty; and as the witnesses referred to in the book itself were present, and ready to give testimony to set the charge at rest, he hoped he should be pardoned for referring to the objectional passage in their presence.

He then read, from the fourth volume of Jefferson's *Memoirs*, page 515, (the same volume which had been brought into the senate by General Hayne,) the following passage:

“FEBRUARY 12th, 1801.

“Edward Livingston tells me that Bayard applied to-day, or last night, to General Samuel Smith, and represented to him the expediency of coming over to the states who vote for Burr; that there was nothing in the way of appointment which he might not command, and particularly mentioned the secretaryship of the navy. Smith asked him if he was authorized to make the offer. He said he was authorized. Smith told this to Livingston, and to W. C. Nicholas, who confirms it to me,” &c.

He then called upon the senators from Maryland

and Louisiana, referred to in this passage, to disprove the statement here made.

Mr. Smith, of Maryland, rose and said, that he had read the paragraph before he came here to-day, and was, therefore, aware of its import. He had not the most distant recollection that Mr. Bayard had ever made such a proposition to him. Mr. Bayard, said he, and myself, though politically opposed, were intimate personal friends, and he was an honourable man. Of all men, Mr. Bayard would have been the last to make such a proposition to any man; and I am confident that he had too much respect for me to have made it, under any circumstances. I never received from any man any such proposition.

Mr. Livingston, of Louisiana, said, that, as to the precise question which had been put to him by the Senator from Delaware, he must say, that having taxed his recollection, as far as it could go, on so remote a transaction, he had no remembrance of it.

WASHINGTON, 6th Feb., 1830.

DEAR SIR—In reply to your letter of yesterday, just received, I have to inform you that the report of my answer in the National Intelligencer, as made in the senate, to the question put to me by Mr. Clayton, is, in substance, correct, and am

Your obedient servant,

S. SMITH,

R. H. BAYARD, Esq.

INTERROGATORIES to be administered to James A. Bayard, Esq., of the state of Delaware, late a member of Congress for the United States from the said state of Delaware, a witness to be produced, sworn, and examined in a cause now depending in the supreme court of judicature of the state of New-York, between Aaron Burr, plaintiff, and James Cheetham, defendant, on the part of the defendant.

1st. Do you know the parties, plaintiff and defendant, or either and which of them, and how long have you known them respectively ?

2d. Were you a member of the house of representatives, in congress of the United States, from the state of Delaware, in the sessions holden in the months of January and February, in the year 1801 ?

3d. Was there not an equal number of votes for Thomas Jefferson and Aaron Burr, as president and vice president of the said United States, at the election for those officers in the December preceding, and did not the choice of a president consequently devolve on the said house of representatives ?

4th. Did not the said house ballot for the president several times before a choice was made : if so, how many times ? Was not the frequency of balloting occasioned by an attempt on the part of several members of Congress to elect the said plaintiff, Aaron Burr, as president ? Do you know who such members were ? if so, what were their names ?

5th. Do you know that any measures were suggested or pursued by any person or persons to secure the election of Aaron Burr to the presidency ? if so, who

were such persons or person? Did *he*, the said Aaron Burr, know thereof? Were there any letter or letters written communicating such an intention? if so, were such letter or letters forwarded to him through the post-office by any person, and who? Has he not informed you, or have you not understood (and if so, how) that he was apprized that an attempt would be made to secure his election?

6th. Did he or any other person (and if so, who) ever communicate to you, by writing or otherwise, or to any other person or persons to your knowledge, that any measure had been suggested, or would be pursued, to secure his election? When were these communications made?

7th. Had not some of the federal members of congress a meeting at Washington, in the month of December, 1800, or of January or of February, 1801, at which it was determined to support Aaron Burr for the presidency? Or if there were any meeting or meetings to your knowledge, in respect to the ensuing election for a president of the United States in the said house of representatives, what was advised or concluded upon to the best of your remembrance or belief? Was not David A. Ogden, of the city of New-York, attorney at law, authorized or requested by you or some other member or members of congress, or some other person, and who in particular, to call upon the plaintiff and inquire of him—

1st. What conduct he would pursue in respect to certain cardinal points of federal policy?

2d. What co-operation or aid the plaintiff could or would afford towards securing his own election to the presidency? or if you or some other person did not

authorize or request the said David A. Ogden to make such communication to the plaintiff in exact terms, what in substance was such authority or request? Do you know, or were you informed by the said David A. Ogden, or otherwise, that he or any other person had made the said communication to the plaintiff, or the same in substance? Do you know, or have you been informed, (and if so, how,) that the plaintiff declared, as to the first question, it would not be expedient to enter into explanations, or words to that effect? That as to the second question, New-York and Tennessee would vote for him on a second ballot, and New-Jersey might be induced to do the same, or words to that effect? Did you ever communicate with the plaintiff, or he with you, on the subject? Do you know any person who did communicate with him? and if so, what did he say?

Did you not receive a letter or letters from Alexander Hamilton, of New-York, and late secretary of the treasury of the United States, now deceased, in the month of January or February, 1801, or at some other time, and when, respecting the election of a president of the United States? Did he not communicate to you that the said David A. Ogden had been requested to see the plaintiff for the purposes aforesaid? And what in particular were the contents of such letters or letter, or communication? Do you know that any, and if so, what measures were suggested or pursued to secure the election of said plaintiff as president; and did the said plaintiff know, or was he informed thereof, or what did he know, or of what was he informed? Had you any reason or reasons to believe that any of the states would relinquish Thomas

Jefferson and vote for Aaron Burr as president in the said election in the said house of representatives, or that the said Aaron Burr calculated on such relinquishment? If so, which state or states, and what was the reason or reasons of such belief?

8th. Do you know any matter, circumstance, or thing, which can be material to the defendant in this cause? If yea, set the same forth fully and particularly.

Interrogatory on the part of the plaintiff.—Do you know of any matter or thing that may be beneficial to the plaintiff on the trial of this cause? If so, declare the same fully and at length, in the same manner as if you had been particularly interrogated thereto.

MILLER & VAN WYCK, Att'ys for def't.

Approved March 6, 1805.

B. LIVINGSTON.

The Deposition of JAMES A. BAYARD, sworn and examined on the twenty — day of — in the year of our Lord one thousand eight hundred and five, at Wilmington, in the state of Delaware, by virtue of a commission issuing out of the supreme court of judicature of the state of New-York, to John Vaughan, — or any two of them, directed for the examination of the said James A. Bayard, in a cause there depending between Aaron Burr, plaintiff, and James Cheetham, defendant, on the part and behalf of the defendant.

1st. To the first interrogatory this deponent answers and says:—As a member of the house of repre-

sentatives I paid a visit of ceremony to the plaintiff on the fourth of March, in the year one thousand eight hundred and one, and was introduced to him. I had no acquaintance with him before that period. I had no knowledge of the defendant but what was derived from his general reputation, before the last session of congress, when a personal acquaintance commenced upon my becoming a member of the senate.

2d. To the second interrogatory this deponent saith : I was.

3d. To the third interrogatory this deponent saith : there was an equality of electoral votes for Mr. Jefferson and Mr. Burr, and the choice of one of them did, of consequence, devolve on the house of representatives.

4th. To the fourth interrogatory this deponent saith : the house resolved into states, balloted for a president a number of times, the exact number is not at present in my recollection, before a choice was made. The frequency of balloting was occasioned by the preference given by the federal side of the house to Mr. Burr. With the exception of Mr. Huger, of South Carolina, I recollect no federal member who did not not concur in the general course of balloting for Mr. Burr. I cannot name each member. The federal members at that time composed a majority of the house, though not of the states. Their names can be ascertained by the journals of the house of representatives.

5th. To the fifth interrogatory this deponent saith : I know of no measures but those of argument and persuasion which were used to secure the election of Mr. Burr to the presidency. Several gentlemen of

the federal party doubted the practicability of electing Mr. Burr, and the policy of attempting it. Before the election came on there were several meetings of the party to consider the subject. It was frequently debated, and most of the gentlemen who had adopted a decided opinion in favour of his election, employed their influence and address to convince those who doubted of the propriety of the measure. I cannot tell whether Mr. Burr was acquainted with what passed at our meetings. But I neither knew nor heard of any letter being written to him on the subject. He never informed me, nor have I reason to believe further than inference from the open professions and public course pursued by the federal party, that he was apprized that an attempt would be made to secure his election.

6th. To the sixth interrogatory the deponent saith : Mr. Burr, or any person on his behalf, never did communicate to me in writing or otherwise, nor to any other persons of which I have any knowledge, that any measures had been suggested, or would be pursued, to secure his election. Preceding the day of the election, in the course of the session, the federal members of congress had a number of general meetings, the professed and sole purpose of which was to consider the propriety of giving their support to the election of Mr. Burr. The general sentiment of the party was strongly in his favour. Mr. Huger, I think, could not be brought to vote for him. Mr. Craik and Mr. Baer, of Maryland, and myself, were those who acquiesced with the greatest difficulty and hesitation. I did not believe Mr. Burr could be elected, and thought it vain to make the attempt ; but I was chiefly influenced by

the current of public sentiment, which I thought it neither safe nor politic to counteract. It was, however, determined by the party, without consulting Mr. Burr, to make the experiment whether he could be elected. Mr. Ogden never was authorized nor requested by me, nor any member of the house, to my knowledge, to call upon Mr. Burr, and to make any propositions to him of any kind or nature. I remember Mr. Ogden's being at Washington, while the election was depending. I spent one or two evenings in his company at Stiller's hotel, in small parties, and we recalled an acquaintance of very early life, which had been suspended by a separation of eighteen or twenty years. I spent not a moment with Mr. Ogden in private. It was reported that he was an agent for Mr. Burr, or it was understood that he was in possession of declarations of Mr. Burr, that he would serve as president if elected. I never questioned him on the subject. Although I considered Mr. Burr personally better qualified to fill the office of president than Mr. Jefferson, yet, for a reason above suggested, I felt no anxiety for his election, and I presumed if Mr. Ogden came on any errand from Mr. Burr, or was desirous of making any disclosure relative to his election, he would do it without any application from me. But Mr. Ogden, or any other person, never did make any communication to me from Mr. Burr, nor do I remember having any conversation with him relative to the election. I never had any communication, directly or indirectly, with Mr. Burr in relation to his election to the presidency. I was one of those who thought from the beginning, that the election of Mr. Burr was not practicable. The sentiment was

frequently and openly expressed. I remember it was generally said by those who wished a perseverance in the opposition to Mr. Jefferson, that several democratic states were more disposed to vote for Mr. Burr than for Mr. Jefferson. That out of complaisance to the known intention of the party they would vote a decent length of time for Mr. Jefferson, and as soon as they could excuse themselves by the imperious situation of affairs, would give their votes for Mr. Burr, the man they really preferred. The states relied upon for this change were New-York, New-Jersey, Vermont, and Tennessee. I never, however, understood that any assurance to this effect came from Mr. Burr. Early in the election it was reported that Mr. Edward Livingston, the representative of the city of New-York, was the confidential agent of Mr. Burr, and that Mr. Burr had committed himself entirely to the discretion of Mr. Livingston, having agreed to adopt all his acts. I took an occasion to sound Mr. Livingston on the subject, and intimated, that having it in my power to terminate the contest, I should do so, unless he could give me some assurance that we might calculate upon a change in the votes of some of the members of his party. Mr. Livingston stated, that he felt no great concern as to the event of the election, but he disclaimed any agency from Mr. Burr, or any connexion with him on the subject, and any knowledge of Mr. Burr's designing to co-operate in support of his election.

7th. The deponent, answering that part of the seventh interrogatory which relates to letters received from the late Alexander Hamilton, says: I did receive, in the course of the winter of 1801, several letters from General Hamilton, on the subject of the

election, but the name of David A. Ogden is not mentioned in any of them. The general design and effect of these letters was to persuade me to vote for Mr. Jefferson, and not for Mr. Burr. The letters contain very strong reasons, and a very earnest opinion, against the election of Mr. Burr. In answer to the residue of the same interrogatory, the deponent saith: I repeat, that I know of no means used to promote the election of Mr. Burr, but persuasion. I am wholly ignorant of what the plaintiff was apprized of in relation to the election, as I had no communication with him, directly or indirectly; and as to the expectation of a change of votes from Mr. Jefferson to Mr. Burr, I never knew a better ground for it than the opinions and calculations of a number of members.

8th. In answer to the eighth interrogatory the deponent saith: I know of nothing which, in my opinion, can be of service to the defendant in the cause.

To the interrogatory on the part of the plaintiff, the deponent answers: Having yielded, with Messrs. Craik and Baer, of Maryland, to the strong desire of the great body of the party with whom we usually acted, and agreed to vote for Mr. Burr, and those gentlemen and myself being governed by the same views and motives, we pledged ourselves to each other to pursue the same line of conduct, and act together. We felt that *some concession* was due to the judgment of the great majority of our political friends, who differed from us in opinion, but we determined that no consideration should make us lose sight for a moment of the necessity of a president being chosen. We therefore resolved, that as soon as it was fairly ascertained that Mr. Burr could not be elected, to

give our votes to Mr. Jefferson. General Morris, of Vermont, shortly after acceded to this arrangement. The result of the ballot of the states had uniformly been eight states for Mr. Jefferson, six for Mr. Burr, and two divided. Mr. Jefferson wanted the vote of one state only; those three gentlemen belonged to the divided states; I held the vote of the state of Delaware; it was therefore in the power of either of us to terminate the election. Those gentlemen knowing the strong interest of my state to have a president, and knowing the sincerity of my determination to make one, left it to me to fix the time when the opposition should cease, and to make terms if any could be accomplished with the friends of Mr. Jefferson. I took pains to disclose this state of things in such a manner, that it might be known to the friends of Mr. Burr, and to those gentlemen who were believed to be most disposed to change their votes in his favour. I repeatedly stated to many gentlemen with whom I was acting, that it was a vain thing to protract the election, as it had become manifest that Mr. Burr would not assist us, and as we could do nothing without his aid. I expected, under these circumstances, if there were any latent engines at work in Mr. Burr's favour, the plan of operations would be disclosed to me; but although I had the power, and threatened to terminate the election, I had not even an intimation from any friend of Mr. Burr's, that it would be desirable to them to protract it. I never did discover that Mr. Burr used the least influence to promote the object we had in view. And being completely persuaded that Mr. Burr would not co-operate with us, I determined to end the contest by voting for Mr. Jefferson. I publicly announced the

intention which I designed to carry into effect the next day. In the morning of the day there was a general meeting of the party, where it was generally admitted Mr. Burr could not be elected; but some thought it was better to persist in our vote, and to go without a president rather than to elect Mr. Jefferson. The greater number, however, wished the election terminated, and a president made; and in the course of the day the manner was settled, which was afterwards adopted, to end the business.

Mr. Burr probably might have put an end sooner to the election by coming forward and declaring that he would not serve if chosen, but I have no reason to believe, and never did think, that he interfered even to the point of personal influence, to obstruct the election of Mr. Jefferson, or to promote his own.

WASHINGTON, 7th January, 1801.

DEAR SIR—I have been but a few days in this city, but since my arrival have had the pleasure to receive the letter which you did me the honour to write on the 27th ult. I am fully sensible of the great importance of the subject to which it relates, and am therefore extremely obliged by the information you have been so good as to communicate.

* * * * *

It is considered that, at least in the first instance, Georgia, North-Carolina, Virginia, Tennessee, Kentucky, Pennsylvania, New-Jersey, and New-York, will vote for Mr. Jefferson. It is probable that Maryland and Vermont will be divided. It is therefore

counted, that upon the first ballot it would be possible to give to Mr. Burr six votes. It is calculated, however, and strongly insisted by some gentlemen, that a persevering opposition to Mr. Jefferson would bring over New-York, New-Jersey, and Maryland. What is the probability relative to New-York, your means enable you to form the most correct opinion. As to New-Jersey and Maryland, it would depend on Mr. Lynn of the former, and Mr. Dent of the latter state.

I assure you, sir, there appears to be a strong inclination in a majority of the federal party to support Mr. Burr. The current has already acquired considerable force, and is manifestly increasing. The vote which the representation of a state enables me to give, would decide the question in favour of Mr. Jefferson. At present I am by no means decided as to the object of preference. If the federal party should take up Mr. Burr, I ought certainly to be impressed with the most undoubting conviction before I separated myself from them. I cannot, however, deny that there are strong considerations which give a preference to Mr. Jefferson. The subject admits of many and very doubtful views; and before I resolve on the part I shall take, I will await the approach of the crisis which may probably bring with it circumstances decisive of the event.

The federal party meet on Friday, for the purpose of forming a resolution as to their line of conduct. I have not the least doubt of their agreeing to support Mr. Burr.

Their determination will not bind me; for though it might cost me a painful struggle to disappoint the

views and wishes of many gentlemen with whom I have been accustomed to act, yet the magnitude of the subject forbids the sacrifice of a strong conviction. I cannot answer for the coherence of my letter, as I have undertaken to write to you from the chamber of representatives, with an attention divided by the debate which occupies the house. I have not considered myself at liberty to show your letter to any one, though I think it would be serviceable, if you could trust my discretion in the communication of it.

I am, with great consideration,

Your very obd't serv't.

JAMES A. BAYARD.

Hon. ALEXANDER HAMILTON.

FREDERICK, April 19, 1830.

RICHARD H. BAYARD, Esq.

SIR—In compliance with your request I now communicate to you my recollections of the events of the presidential election by the house of representatives in 1801. There has been no period of our political history more misunderstood, and more grossly misrepresented. The course adopted by the federal party was one of principle, and not of faction, and I think the present a suitable occasion for explaining the views and motives at least of those gentlemen who having it in their power to decide the election at any moment, were induced to protract it for a time, but ultimately to withdraw their opposition to Mr. Jefferson.

I have no hesitation in saying, that the facts stated in the deposition of your father, the late James A.

Bayard, so far as they came to my knowledge, are substantially correct; and although nearly thirty years have elapsed since that eventful period, my recollection is vivid, as to the principal circumstances, which, from the part I was called upon to act, were deeply graven on my memory. As soon as it was generally known that the two democratic candidates, Jefferson and Burr, had the highest, and an equal number of votes, and that the election would consequently devolve on the house of representatives, Mr. Dent, who had hitherto acted with the federal party, declared his intention to vote for Mr. Jefferson, in consequence of which determinntian, the vote of Maryland was divided.

It was soon ascertained that there were six individuals, the vote of any one of whom could at any moment decide the election. These were, your father, the late James A. Bayard, who held the vote of the state of Delaware, General Morris, of Vermont, who held the divided vote of that state, and Mr. Craik, Mr. Thomas, Mr. Dennis, and myself, who held the [divided vote of Maryland. Much anxiety was shown by the friends of Mr. Jefferson, and much ingenuity used to discover the line of conduct which would be pursued by them. Deeply impressed with the responsibility which attached to their peculiar situation, and conscious that the American people looked to them for a president, they could not rashly determine either to surrender their constitutional discretion, or to disappoint the expectations of their fellow citizens.

Your father, Mr. Craik, and myself, having compared ideas upon the subject, and finding that we entertained the same views and opinions, resolved to act

together, and accordingly entered into a solemn and mutual pledge that we would in the first instance yield to the wishes of the great majority of the party with whom we acted, and vote for Mr. Burr, but that no consideration should induce us to protract the contest beyond a reasonable period, for the purpose of ascertaining whether he could be elected. We determined that a president should be chosen, but were willing thus far to defer to the opinions of our political friends, whose preference of Mr. Burr was founded upon a belief that he was less hostile to federal men and federal measures, than Mr. Jefferson. Gen. Morris and Mr. Dennis concurred in this arrangement.

The views by which the federal party were governed were these:—They held that the constitution had vested in the house of representatives a high discretion in a case like the present, to be exercised for the benefit of the nation ; and that in the execution of this delegated power, an honest and unbiassed judgment was the measure of their responsibility. They were less certain of the hostility of Mr. Burr to federal policy than of that of Mr. Jefferson, which was known and decided. Mr. Jefferson had identified himself with, and was at the head of the party in congress who had opposed every measure deemed necessary by the federalists for putting the country in a posture of defence ; such as fortifying the harbours and seaports, establishing manufactories of arms ; erecting arsenals, and filling them with arms and ammunition ; erecting a navy for the defence of commerce, &c. His speculative opinions were known to be hostile to the independence of the judiciary, to the financial system of the country, and to internal improvements.

All these matters the federalists believed to be intimately blended with the prosperity of the nation, and they deprecated, therefore, the elevation of a man to the head of the government whose hostility to them was open and avowed. It was feared, too, from his prejudices against the party which supported them, that he would dismiss all public officers who differed with him in sentiment, without regard to their qualifications and honesty, but on the ground only of political character. The house of representatives adopted certain resolutions for their government during the election, one of which was, that there should be no adjournment till it was decided.

On the 11th February, 1801, being the day appointed by law for counting the votes of the electoral colleges, the house of representatives proceeded in a body to the senate chamber, where the vice president, in view of both houses of congress, opened the certificates of the electors of the different states, and as the votes were read the tellers on the part of each house counted, and took lists of them, which being compared and delivered to him, he announced to both houses the state of the votes; which was, for Thomas Jefferson, 73 votes, for Aaron Burr, 73 votes, for John Adams, 65 votes, for Charles Pinckney, 64 votes, for John Jay, one vote;—and then declared that the greatest number, and majority of votes, being equal, the choice had devolved on the house of representatives. The members of the house then withdrew to their own chamber, and proceeded to ballot for a president. On the first ballot, it was found that Thomas Jefferson had the votes of eight states, Aaron Burr of six states, and that two were divided. As there were sixteen states, and

a majority was necessary to determine the election, Mr. Jefferson wanted the vote of one state. Thus the result which had been anticipated was realized.

The balloting continued throughout that day and the following night at short intervals, with the same result, the 26th ballot being taken at 8 o'clock on the morning of the 12th February. The balloting continued with the same result from day to day, till the 17th of February, without any adjournment of the house. On the previous day, (February 16,) a consultation was held by the gentlemen I have mentioned, when, being satisfied that Mr. Burr could not be elected, as no change had taken place in his favour, and there was no evidence of any effort on the part of himself or his personal friends, to procure his election, it was resolved to abandon the contest. This determination was made known to the federal members generally, and excited some discontent among the violent of the party, who thought it better to go without a president than to elect Mr. Jefferson. A general meeting, however, of the federal members was called, and the subject explained, when it was admitted that Mr. Burr could not be elected. A few individuals persisted in their resolution not to vote for Mr. Jefferson, but the great majority wished the election terminated and a president chosen. *Having also received assurances from a source on which we placed reliance, that our wishes with regard to certain points of federal policy in which we felt a deep interest would be observed in case Mr. Jefferson was elected,* the opposition of Vermont, Delaware, and Maryland, was withdrawn, and on the 36th ballot your father, the late James A. Bayard, put in a blank ballot, myself and my colleagues did the same, and Gen. Mor-

ris absented himself. The South Carolina federalists also put in blank ballots. Thus terminated that memorable contest.

Previous to and pending the election, rumors were industriously circulated, and letters written to different parts of the country, charging the federalists with the design to prevent the election of a president, and to usurp the government by an act of legislative power. Great anxiety and apprehensions were created in the minds of all, and of none more than the federalists generally, who were not apprized of the determination of those gentlemen who held the power, and were resolved to terminate the contest when the proper period arrived. But neither these rumors nor the excitement produced by them, nor the threats made by their opponents, to resist by force such a measure, had the least influence on the conduct of those gentlemen. They knew the power which they possessed, and were conscious of the uprightness of their views, and of the safety and constitutional character of the course they had adopted. I was privy to all the arrangements made, and attended all the meetings of the federal party when consulting on the course to be pursued in relation to the election, and I pledge my most solemn asseveration, that no such measure was ever for a moment contemplated by that party: that no such proposition was ever made; and that if it had ever been, it would not only have been discouraged but instantly put down by those gentlemen who possessed the power, and were pledged to each other to elect a president before the close of the session.

I am respectfully, sir,
your most obd't servant,
GEORGE BAER.

LEIPERVILLE, 4th of 5th mo., 1830.

RICHARD H. BAYARD,

ESTEEMED FRIEND:—I have carefully considered the contents of thy letter of the 16th ultimo, and can fully appreciate the object in view, which appears to be the vindication of the character of thy father, James A Bayard, in consequence of certain “injurious imputations” affecting it, contained in the writings of Jefferson, lately published, in reference to his conduct in the presidential election of 1801. I must be excused from attempting any thing like a circumstantial account of the transactions of so remote a period. The depositions shown me by *thee*, which were made by thy father, in 1805, and the statement recently drawn up by George Baer, (my colleague in congress,) of the occurrences which then happened, I believe to be substantially correct; and I may add, that as a federal member of the house of representatives, I attended the meetings of the federalists, held for consultation at that deeply interesting crisis, and know of no cause to doubt the sincerity of the *professed object* of the party, which was to execute the important duty devolved upon them by exercising a *constitutional* discretion for the benefit of the nation, according to the dictates of their best judgment, at the time. Of any project or determination inconsistent with these views, I am utterly ignorant, as I am of any fact or circumstance which ought in the slightest degree to lessen the high *respect* which, in common with the American people, I have uniformly entertained for the *integrity* of thy father, as well as for his pre-eminent talents, zealously devoted to the service of his country.

JNO. CHEW THOMAS.

I, William Jarvis, of Weathersfield, in the county of Windsor, and state of Vermont, do testify and declare, that in the friendly intercourse which took place between the late Honourable Lewis R. Morris and myself, among various other topics, politics often became the subject of conversation. In one of those conversations the contest which took place in the house of representatives in the year 1801, for the election of Mr. Jefferson or Mr. Burr, to be president of the United States, was adverted to; when General Morris remarked that several federalists of high standing wished for the election of Mr. Jefferson in preference to Mr. Burr, naming the late Honourable James A. Bayard, of Delaware, as being one; and stated that Mr. Bayard came to him, (General Morris,) and urged him to vote in favour of Mr. Jefferson, or to absent himself when the ballots of the state delegations were taken; Mr. Bayard remarking to him, that as he (Mr. Bayard) represented a federal state, he could not with propriety vote for Mr. Jefferson, but as the state of Vermont was friendly to the election of Mr. Jefferson, no objection of the kind precluded him (General Morris) from giving his vote to Mr. Jefferson, or from absenting himself from the poll. As the delegation of Vermont in congress consisted of two members, one of which had voted for Mr. Jefferson, and he (General Morris) had voted for Mr. Burr, the vote of the state had previously been lost; but upon the representations of Mr. Bayard, with whom General Morris said he was on terms of the most friendly intimacy, and for whose talents he entertained the highest respect, and had the most entire confidence in his honour and integrity, he was induced, prior to the last ballot, to ab-

sent himself from the house, and the other member being in favour of Mr. Jefferson, the vote of Vermont was accordingly given to him. After a lapse of ten or twelve years, I do not pretend to recollect the precise language of General Morris, but I am satisfied, that the preceding declaration contains the true and faithful sense of his communication to me relative to that question.

WM. JARVIS..

WEATHERSFIELD, 29th April, 1830.

COUNCIL CHAMBER, BOSTON, June 2d, 1830.

SIR :—I enclose you the statement of my brother, Wm. Jarvis, of Vermont, and it gives him and myself great pleasure to be any way instrumental in vindicating the character of your father.

One such witness as Mr. Jarvis is sufficient. He was appointed consul at Lisbon, by Mr. Jefferson, and was there as consul and charge d'affaires many years. Was also appointed by Mr. Madison commissary general of the northern army, which he declined; was one of the presidential electors of the state of Vermont at the last election, and has repeatedly declined the gubernatorial chair of that state.

With great respect, your ob't servant,

JOSEPH E. SPRAGUE..

RICHARD H. BAYARD, Esq.

POLITICAL HISTORY.

Letter from Judge Paine, of Vermont, to the Editor of Niles' Register.

WILLIAMSTOWN, (Vt.) June 1, 1830.

DEAR SIR—Noticing in the papers of the day the memorandum made by the late President Jefferson, of the communication of Mr. Livingston of Louisiana, in relation to a conversation said to be held by the late Mr. Bayard, of Delaware, with General Smith, of Maryland, pending the presidential election in the house of representatives in 1801, I determined immediately to communicate to you my knowledge of the views and sentiments of Mr. Bayard in relation to that election. But from a reluctance to appear in the public prints, at my time of life, I changed my determination. However, by the advice of friends, on whose judgment I rely, I now concisely communicate to you my knowledge on that subject.

And first, permit me to say, that probably I possess more knowledge on the subject, as it relates to Mr. Bayard, than any person now living. Mr. Bayard, as is well known, was at the time the sole representative from Delaware, and could cast the vote of that state as he thought proper. The late General Morris and Matthew Lyon were the representatives from this state, Vermont; for at that time Vermont had but two representatives. General Morris voted for Mr. Burr, and Mr. Lyon for Mr. Jefferson. In consequence, the vote of Vermont was lost. At the same

time I was in the senate, and was on intimate and confidential terms with General Morris, and had been so for many years. He held conversations with me every day during the balloting in the house of representatives, in relation to the business before them.

General Morris was very intimate with Mr. Bayard, and, in consequence of this intimacy, I became very well acquainted with the latter gentlemen. And *I do know*, that Mr. Bayard was much dissatisfied that the balloting should have been so long protracted, and that the day before the last ballot, he declared, among his political friends, it should be brought to a close the next day. He thought that the delay would cause a dangerous excitement in the country.

The evening before the last ballot was taken, General Morris informed me, that he should not be in the house the next day, and in consequence Mr. Jefferson would be elected. He said he was induced to secede by the representations, and at the request of Mr. Bayard; who thought that he, General Morris, could secede with greater propriety than a person who was the only representative of a federal state, and Vermont, at the time, was nearly equally divided on the subject. So that I always considered Mr. Bayard as the means of Mr. Jefferson's election, and I believe he was so considered by many others.

That Mr. Bayard might have sportively said to General Smith what is attributed to him, is possible. And if so, General Smith would not probably remember it. But if such conversation was held with corrupt views, for the purpose of influencing him, it is impossible he should have forgotten it. I have no be-

lief that Mr. Bayard would seriously have made what amounts to a proposition to corrupt another.

I am, with great regard,

Your obedient servant,

ELIJAH PAINE.

It appears, then, from the proceedings in the senate, that the first charge retailed in the memoirs of Mr. Jefferson, is negatived by the testimony of those on whose authority it professes to be founded. It further appears, from the deposition of Mr. Bayard, in the case of Burr and Cheetham, that he had not even a personal acquaintance with Mr. Burr previously to the 4th March, 1801; and that of General Smith, in the case of Gillespie and Smith, that he, on the contrary, was on terms of intimacy with Colonel Burr, in correspondence with him from the beginning of the session until the termination of the election, and had been constituted by him his proxy to decline any contest with Mr. Jefferson. The letter addressed to him by Colonel Burr for this purpose was dated the 16th December, 1800, and was published in Relf's Philadelphia Gazette of the 30th December; it was therefore a matter of notoriety. The calumny, therefore, involves the absurdity of an entire stranger to Colonel Burr making an authorized proposition on his behalf to one of his confidential friends, who had been selected for the very purpose of defeating the object alleged to be in view. It is also evident, from the whole course of Mr. Bayard in reference to the election, established by his own deposition, his letter to General Hamilton,

the statements of Messrs. Baer and Thomas, and the declarations of General Morris, that he had no communication whatever with Mr. Burr, and that the charge is an idle slander which Mr. Jefferson should have been too wise to have committed to paper, and possessed of too much propriety of feeling to have left for posthumous publication.

The second charge, at page 521 of the 4th volume of the "Memoirs," is as follows, under date of April 15th, 1806.

"I did not commit these things to writing at the time, but I do it now, because in a suit between him (Colonel Burr) and Cheetham he has had a deposition of Mr. Bayard taken, which seems to have no relation to the suit, nor to any other object than to calumniate me. Bayard pretends to have addressed to me, during the pending of the presidential election in February, 1801, through General Samuel Smith, certain conditions on which my election might be obtained, and that General Smith, after conversing with me, gave answers for me. This is absolutely false. No proposition of any kind was ever made to me on that occasion by General Smith, nor any answer authorized by me; and this fact General Smith affirms at this moment."

The reply we give to this memorandum of Mr. Jefferson, is the publication of the depositions of Mr. Bayard and General Smith, in the case of Gillespie and Smith. The documents in this case were obtained from the Hon. Stephen R. Bradley, of Vermont, one of the commissioners to take the depositions of witnesses in the cause, and at the time a senator in congress from the state of Vermont.

It will be perceived that Mr. Jefferson, in his anxiety

to arraign the statement of Mr. Bayard, has assumed the fact that his deposition was made in the case of Burr and Cheetham, and from this *groundless* assumption drawn a conclusion that the deposition had no relation to the suit, and no other object than to calumniate him.

The unfairness and falsity of this conclusion are manifest from the interrogatories in the case in which the deposition was made, which in truth was that of Gillespie and Smith.

The deposition of General Smith, in the same case, sworn to on the very day on which Mr. Jefferson's memorandum is dated, also shows how unwarranted is his assertion, that his denial of the facts stated in the deposition of Mr. Bayard is affirmed by that gentleman. It will be seen, on the contrary, that the deposition of Mr. Bayard is substantially and fully confirmed by that of General Smith.

The charge of calumny may therefore be retorted upon Mr. Jefferson. The deposition of Mr. Bayard was made during the lifetime of all the parties connected with the matters detailed in it, and before commissioners opposed to him in political principles, and members of the same party with Mr. Jefferson.

The memorandum of Mr. Jefferson was secluded among his private papers till long after the death of Mr. Bayard, and left for posthumous publication, to tarnish his reputation when the means of refuting it *might* have been lost. Those means, however, have been preserved, and the object of the memorandum, as far as relates to Mr. Bayard, is, we believe, entirely defeated; with what benefit to the reputation of Mr. Jefferson, is left to others to determine.

INTERROGATORIES to be administered to witnesses, to be produced, sworn, and examined in a certain cause now depending and at issue in the supreme court of judicature of the people of the state of New York, wherein James Gillespie is plaintiff, and Abraham Smith defendant, on the behalf of the defendant.

1st. Do you or do you not know Thomas Jefferson, president of the United States? If yea, declare the same, together with the time when you first became acquainted with him.

2d. Was you a member of the house of representatives of the United States, at Washington, in the session of 1800 and 1801? If yea, state the time particularly.

3d. Do you or do you not know that in the years 1800 and 1801, Thomas Jefferson and Aaron Burr, had each an equal number of votes given by the electors for president and vice president of the United States, and that consequently the right of electing a president devolved upon the house of representatives of the United States? State your knowledge herein particularly.

4th. Do you or do you not know, or have you heard so that you believe, of any negotiations, bargains, or agreements, in the year 1800 or 1801, after the said equality became known and before the choice of the president, by or on behalf of any person, and whom, with the parties called federal or republican, or either of them, or with any individual or individuals, and whom, of either of the said parties, relative to the office of president of the United States? If yea, declare the particulars thereof, and the reasons of such your belief.

5th. Do you or do you not know Aaron Burr, late vice president of the United States? If yea, declare the same, with the time when your acquaintance commenced.

6th. Do you know, or have you heard so that you believe, of any negotiations, bargains, or agreements in the year 1800 or 1801, by or on behalf of the said Aaron Burr, or by or on behalf of any other person, and whom, with the parties called federal or republican, or either of them, or with any individual, and whom, of the said parties, relative to the office of president of the United States? If yea, declare the same, with all the particulars thereof, and the reasons of such your belief.

7th. Did you receive any letters from the said Aaron Burr, after the said equality of votes was known, and before the final choice of a president? If yea, what was the tenor of such letter? Did the conduct of the said Aaron Burr correspond with the declarations contained in the said letter? Declare your knowledge and belief, together with the grounds and reasons thereof.

DEPOSITION of the Honourable James A. Bayard, a witness produced, sworn, and examined in a cause depending in the supreme court of the state of New-York, between James Gillespie, plaintiff, and Abraham Smith, defendant, on the part of the plaintiff, follows.

To the first interrogatory, deponent answers and says, I do not know either the plaintiff or defendant.

To the second interrogatory, he answers and says,

I was personally acquainted with Thomas Jefferson, before he became president of the United States, the precise length of time I do not recollect. The acquaintance did not extend beyond the common salutation upon meeting, and accidental conversation upon such meetings.

To the third interrogatory he answers and says, I was a member of the house of representatives of the United States, during the fifth, sixth, and seventh congresses, from the 3d of March, 1797, to the 3d of May, 1803.

To the fourth interrogatory, he answers and says—The electoral votes for Thomas Jefferson and Aaron Burr, for president of the United States, were equal, and that the choice of one of them as president did devolve on the house of representatives.

To the fifth interrogatory, he answers and says—I presume this interrogatory points to an occurrence which took place before the choice of president was made, and after the balloting had continued for several days, of which I have often publicly spoken. My memory enables me to state the transaction in substance correctly, but not to be answerable for the precise words which were used upon the occasion. Messrs. Baer and Craig, members of the house of representatives from Maryland, and General Morris, a member of the house from Vermont, and myself, having the power to determine the votes of the states, from similarity of views and opinions, during the pendency of the election, made an agreement to vote together. We foresaw that a crisis was approaching which might probably force us to separate in our votes from the party with whom we usually acted. We were de-

terminated to make a president, and the period of Mr. Adams's administration was rapidly approaching.

In determining to recede from the opposition to Mr. Jefferson, it occurred to us, that probably instead of being obliged to surrender at discretion, we might obtain terms of capitulation. The gentlemen whose names I have mentioned, authorized me to declare their concurrence with me upon the best terms that could be procured. The vote of either of us was sufficient to decide the choice. With a view to the end mentioned, I applied to Mr. John Nicholas, a member of the house from Virginia, who was a particular friend of Mr. Jefferson. I stated to Mr. Nicholas, that if certain points of the future administration could be understood and arranged with Mr. Jefferson, I was authorized to say that three states would withdraw from an opposition to his election. He asked me what those points were: I answered, first, sir, the support of the public credit; secondly, the maintenance of the naval system; and lastly, that subordinate public officers employed only in the execution of details, established by law, shall not be removed from office on the ground of their political character, nor without complaint against their conduct. I explained myself that I considered it not only reasonable but necessary that offices of high discretion and confidence should be filled by men of Mr. Jefferson's choice. I exemplified by mentioning on the one hand, the offices of the secretaries of state, treasury, foreign ministers, &c., and on the other, the collectors of ports, &c. Mr. Nicholas answered me, that he considered the points as very reasonable, that he was satisfied that they corresponded with the views and intentions of Mr. Jefferson, and

knew him well. That he was acquainted with most of the gentlemen who would probably be about him and enjoying his confidence, in case he became president, and that if I would be satisfied with *his* assurance, he could solemnly declare it as his opinion, that Mr. Jefferson, in his administration, would not depart from the points I had proposed. I replied to Mr. Nicholas, that I had not the least doubt of the sincerity of his declaration, and that his opinion was perfectly correct, but that I wanted an engagement, and that if the points could in any form be understood as conceded by Mr. Jefferson, the election should be ended: and proposed to him to consult Mr. Jefferson. This he declined, and said he could do no more than give me the assurance of his own opinion as to the sentiments and designs of Mr. Jefferson and his friends. I told him that was not sufficient, that we should not surrender without better terms. Upon this we separated; and I shortly after met with General Smith, to whom I unfolded myself in the same manner that I had done to Mr. Nicholas. In explaining myself to him in relation to the nature of the offices alluded to, I mentioned the offices of George Latimer, collector of the port of Philadelphia, and Allen M'Lane, collector of Wilmington. General Smith gave me the same assurances as to the observance by Mr. Jefferson of the points which I had stated, which Mr. Nicholas had done. I told him I should not be satisfied, nor agree to yield, till I had the assurance of Mr. Jefferson himself; but that if he would consult Mr. Jefferson, and bring the assurance from him, the election should be ended. The general made no difficulty in consulting Mr. Jefferson, and proposed giving me his answer

the next morning. The next day, upon our meeting, General Smith informed me, that he had seen Mr. Jefferson, and stated to him the points mentioned, and was authorized by him to say, that they corresponded with his views and intentions, and that we might confide in him accordingly. The opposition of Vermont, Maryland, and Delaware, was immediately withdrawn, and Mr. Jefferson was made president by the votes of ten states.

To the 6th interrogatory the deponent answers and says: I was introduced to Mr. Burr the day of Mr. Jefferson's inauguration as president. I had no acquaintance with him before, and very little afterwards, till the last winter of his vice presidency, when I became a member of the senate of the United States.

To the seventh interrogatory the deponent answers and says: I do not know, nor did I ever believe, from any information I received, that Mr. Burr entered into any negotiation or agreement with any member of either party, in relation to the presidential election, which depended before the house of representatives.

To the eighth interrogatory the deponent answers and says: Upon the subject of this interrogatory, I can express only a loose opinion, founded upon the conjectures at the time of what could be effected by Mr. Burr, by mortgaging the patronage of the executive. I can only say, generally, that I did believe at the time that he had the means of making himself president. But this opinion has no other ground than conjecture, derived from a knowledge of means which existed, and, if applied, their probable operation on individual characters. In answer to the last part of

the interrogatory deponent says : I know of nothing of which Mr. Burr was apprized, which related to the election.

(Signed)

J. A. BAYARD.

District of Columbia, Washington.

The deposition of the Honourable James A. Bayard, consisting of six pages, was taken and sworn to before us, this 3d day of April, A. D. 1806.

STEPHEN R. BRADLEY,
GEORGE LOGAN.

DEPOSITION of the Honourable Samuel Smith, senator of the United States for the state of Maryland, a witness produced, sworn, and examined in a cause depending in the supreme court of the state of New-York, between James Gillespie, plaintiff, and Abraham Smith, defendant, on the part and behalf of the defendant, as follows :

1st. I knew Thomas Jefferson some years previous to 1800 ; the precise time when our acquaintance commenced I do not recollect.

2d and 3d. I was a member of the house of representatives of the United States in 1800 and 1801, and know that Thomas Jefferson and Aaron Burr had an equal number of the votes given by the electors of president and vice president of the United States.

4th. Presuming that this question may have reference to conversations (for I know of no bargains or agreements) which took place at the time of the bal-

loting, I will relate those which I well recollect to have had with three gentlemen, separately, of the federal party. On the Wednesday preceding the termination of the election, Colonel Josiah Parker asked a conversation with me in private. He said that many gentlemen were desirous of putting an end to the election, that they only wanted to know what would be the conduct of Mr. Jefferson in case he should be elected president, particularly as it related to the public debt, to commerce, and the navy. I had heard Mr. Jefferson converse on all those subjects lately, and informed him what I understood were the opinions of that gentleman. I lived in the house with Mr. Jefferson, and that I might be certain that what I had said was correct, I sought and had a conversation that evening with him on those points, and I presume, though I do not precisely recollect, that I communicated to him the conversation which I had with Colonel Parker.

The next day General Dayton, (a senator,) after some jesting conversation, asked me to converse with him in private. We retired. He said that he, with some other gentlemen, wished to have a termination put to the pending election; but he wished to know what were the opinions or conversations of Mr. Jefferson, respecting the navy, commerce, and the public debt. In answer, I said that I had last night had conversation with Mr. Jefferson on all those subjects. That he had told me that any opinion he should give at this time might be attributed to improper motives. That to me he had no hesitation in saying, that as to the public debt, he had been averse to the manner of funding it, but that he did not believe there was any man who respected his own character, who would or

could think of injuring its credit at this time. That on commerce, he thought that a correct idea of his opinions on that subject might be derived from his writings, and particularly from his conduct while he was minister at Paris, when he thought he had evinced his attention to the commercial interest of his country. That he had not changed opinion, and still did consider the prosperity of our commerce as essential to the true interest of the nation. That on the navy, he had fully expressed his opinion in his Notes on Virginia, that he adhered still to his ideas then given. That he believed our growing commerce would call for protection; that he had been averse to a too rapid increase of our navy, that he believed a navy must naturally grow out of our commerce, but thought prudence would advise its increase to progress with the increase of the nation, and that in this way he was friendly to the establishment. General Dayton appeared pleased with the conversation, and (I think) said, that if this conversation had taken place earlier, much trouble might have been saved, or words to that effect.

At the funeral of Mr. Jones (of Georgia) I walked with Mr. Bayard (of Delaware.) The approaching election became the subject of conversation. I recollect no part of that conversation, except his saying that he thought that a half hour's conversation between us might settle the business. That idea was not again repeated. On the day after I had held the conversation with General Dayton, I was asked by Mr. Bayard to go into the committee room. He then stated that he had it in his power (and was so disposed) to terminate the election, but he wished informa-

tion as to Mr. Jefferson's opinions on certain subjects, and mentioned, I think, the same three points already alluded to, as asked by Colonel Parker and General Dayton, and received from me the same answer in substance (if not in words) that I have given to General Dayton. He added a fourth, to wit : What would be Mr. Jefferson's conduct as to the public officers ? he said he did not mean confidential officers, but, by elucidating his question, he added, such as Mr. Lattimer of Philadelphia, and Mr. M'Lane of Delaware. I answered, that I never had heard Mr. Jefferson say any thing on that subject. He requested that I would inquire, and inform him the next day. *I did so. And the next day, (Saturday) told him that Mr. Jefferson had said, that he did not think that such officers ought to be dismissed on political grounds only, except in cases where they had made improper use of their offices to force the officers under them to vote contrary to their judgment. That as to Mr. M'Lane, he had already been spoken to in his behalf by Major Eccleston, and from the character given him by that gentleman, he considered him a meritorious officer, of course, that he would not be displaced, or ought not to be displaced. I further added, that Mr. Bayard might rest assured, (or words to that effect,) that Mr. Jefferson would conduct, as to those points, agreeably to the opinions I had stated as his. Mr. Bayard then said, we will give the vote on Monday ; and we separated. Early in the election my colleague, Mr. Baer, told me that we should have a president, that they would not get up without electing one or the other of the gentlemen. Mr. Baer had voted against Mr. Jefferson until the final vote, when*

I believe he withdrew, or voted blank, but do not perfectly recollect.

5th. I became acquainted with Colonel Burr some time in the revolutionary war.

6th. I know of no agreement or bargain in the years 1800 and 1801 with any person or persons whatsoever respecting the office of president in behalf of Aaron Burr, nor have I any reason to believe that any such existed.

7th. I received a letter from Colonel Burr, dated, I believe, 16th December, 1800, in reply to one which I had just before written him. The letter of Colonel Burr is as follows :

“ It is highly improbable that I shall have an equal number of votes with Mr. Jefferson : but if such should be the result, every man who knows me ought to know, that I would utterly disclaim all competition. Be assured that the federal party can entertain no wish for such an exchange. As to my friends, they would dishonour my views, and insult my feelings, by a suspicion that I would submit to be instrumental in counteracting the wishes and expectations of the people of the United States. And I now constitute you my proxy to declare these sentiments if the occasion shall require.”

I have not now that letter by me, nor any other letter from him to refer to ; the preceding is taken from a printed copy, which corresponds with my recollection, and which I believe to be correct. My correspondence with him continued till the close of the election. In none of his letters to me, or to any

other person that I saw, was there any thing that contradicted the sentiments contained in that letter.

(Signed)

S. SMITH.

City of Washington, in the District of Columbia.

The deposition of the Honourable Samuel Smith, written upon five pages, was duly taken and sworn to before us, two of the commissioners named in the annexed commission, at the Capitol in the said city of Washington, on the fifteenth day of April, in the year of our Lord one thousand eight hundred and six, and of the independence of the United States the thirtieth.

(Signed)

GEORGE LOGAN.

DAVID STONE.

A few facts having reference to the course of Mr. Bayard, during the election of 1801, and indicative of his views and principles, are probably unknown to the public, and we think may be appropriately given in connexion with the preceding documents. On the 17th of February, the day on which the election was terminated in favour of Mr. Jefferson, mainly through the exertions and influence of Mr. Bayard, he was nominated by Mr. Adams to the senate as minister to the French Republic. That nomination was confirmed on the 19th of February, and on the same day Mr. Bayard addressed the following letter to the president, resigning the appointment.

Washington, February 9th, 1801.

SIR—I beg you to accept my thanks for the honour conferred on me, by the nomination as minister to the French Republic. Under most circumstances I should have been extremely gratified with such an opportunity of rendering myself serviceable to the country. But the delicate situation in which the late presidential election has placed me, forbids my exposing myself to the *suspicion* of having adopted, from impure motives, the line of conduct which I pursued. Representing the smallest state in the Union, without resources which could furnish the means of self protection, I was compelled, by the obligation of a sacred duty, so to act as not to hazard the constitution upon which the political existence of the state depends.

The service which I should have to render, by accepting the appointment, would be under the administration of Mr. Jefferson, and having been in the number of those who withdrew themselves from the opposition to his election, it is impossible for me to take an office, the tenor of which would be at his pleasure.

You will therefore pardon me, sir, for begging you to accept my resignation of the appointment.

I have the honour to be,

With perfect consideration,

Your very obedient servant,

JAMES A. BAYARD.

The President of the United States.

The following “extract” is from a letter written three days afterwards, to a near relation, one of the

earliest and most intimate friends of Mr. Bayard. Those who knew him personally, will recognise his character in its sentiments. It contains the principles which governed his political course and ambition then, and through the rest of his life. The same which induced him to accept the mission to Ghent, and, when *peace* was concluded, to refuse that to St. Petersburg.

EXTRACT.

WASHINGTON, February, 22, 1801.

“ You are right in your conjecture as to the office offered me. I have since been nominated Minister to France, concurred in *nem. con.*, commissioned, and resigned. Under proper circumstances, the acceptance would have been complete gratification; but under the existing, I thought the resignation most honourable. To have taken \$18,000 out of the public treasury, with a knowledge that no service could be rendered by me, as the French government would have waited for a man who represented the existing feelings and views of this government, would have been disgraceful. Another consideration of great weight arose from the part I took in the presidential election. As I had given the turn to the election, it was impossible for me to accept an office, which would be held on the tenure of Mr. Jefferson’s pleasure. My ambition shall never be gratified at the expense of a suspicion.

“ I shall never lose sight of the motto of the great original of our name.”

(Signed)

J. A. B.

In conclusion, we have only further to remark, that our publication has been one of defence ; nor have we wandered from the charges relating to the character of our father, for the purpose of commenting upon the opinions of Mr. Jefferson, or investigating the numerous charges contained in his "Memoirs" against the federal party, or the individuals who acted among its leading members, or the states in which it maintained a majority during his administration. These, together with the general views of Mr. Jefferson on religion and government, and his character as a philosopher, statesman, or man, will be more impartially considered at a later day ; more fairly weighed, and truly estimated, when those whose feelings are in any way connected with the contest in which he was so prominent are not to be the arbiters.

His most devoted friends cannot but regret, that the *enlightened judgment* and *benevolent feelings*, which in his letter to Mr. Adams, of June 23, 1813, dictated the sentiment, that *he* should "see with reluctance, the passions of that day rekindled in this, while so many of the actors are living, and all are too near the scene not to participate in sympathies with them," did not *look* beyond the duration of *his own life*, and restrain the publication of much that is contained in the "Memoirs," which, whether with reference to his own fame, or with a proper regard for the opinions, sentiments, and characters of others, *sound discretion alone* would certainly have prevented.

SINCE our purchase of the territory of Louisiana, in 1803, we have known but little of the history of that country, except by parcels; but we are at length furnished with two volumes of the history of this interesting country, by a native, exalted by his rank, but more so by his intelligence and his virtues, Francois Xavier Martin, a judge of distinction and respectability, who has been engaged for twenty years upon the task he has now accomplished. In the thirteenth chapter of his second volume he has made some remarks upon the subject of Colonel Burr's appearance in the river.

In the meanwhile, the president of the United States had received information, that designs were in agitation in the western states, unlawful and unfriendly to the peace of the union; and that the prime mover of them was Burr, the late vice president of the United States. The grounds of that information being inconclusive, the object uncertain, and the fidelity of the western states known to be firm, no immediate step was taken. A rumor was gaining ground, that a numerous and powerful association, extending from New-York, through the western states, to the gulf of Mexico, had been formed—that eight or ten thousand men were to rendezvous in New-Orleans, at no distant period, and from thence, with the co-operation of a naval force, follow Burr to Vera Cruz—that agents from Mexico

had come to Philadelphia, during the summer, and had given assurances that the landing of the expedition would be followed by such an immediate and general insurrection, as would insure the subversion of the existing government, and silence all opposition within a very few weeks!; that a part of the association would descend the Alleghany river, and the first general rendezvous would be at the rapids of the Ohio towards the twentieth of October, and from thence the aggregate force was to proceed in light boats, with the utmost velocity, to New-Orleans, under an expectation of being joined on the route by men raised in the state of Tennessee and other quarters.

It was said that the maritime co-operation relied on, was from a British squadron in the West Indies; that active and influential characters had been engaged in making preparations for six or eight months past, which were in such a state of readiness, that it was expected the van would reach New-Orleans in December, when it was expected the necessary organization and equipment would be completed with such promptitude, that the expedition would leave the Mississippi towards the first of February; it was also added that the revolt of the slaves along the river was depended upon as an auxiliary measure, and that the seizure of the money in the vaults of the banks in New-Orleans, was relied on to supply the funds necessary to carry on the enterprise.

Giving full credit to these reports, Wilkinson determined on making the best arrangement he could with the Spaniards, in order that he might descend to New-Orleans, with the greatest part of his force. Accordingly, on the twenty-ninth of October, being on his

march to the Sabine, he sent Burling, one of his aids-de-camp, to Cordero, with a written message, proposing that, without yielding a pretension, ceding a right, or interfering with discussions which belonged to their superiors, the state of things, at the delivery and possession of the province to the United States, should be restored by the withdrawal of the troops of both governments, from the advanced posts they occupied, to those of Nacogdoches and Natchitoches, respectively. He proposed that Cordero's accession to this proposal should be conclusive, and promised to begin his retrograde march on the day the Spanish camp, on the right bank of the Sabine, should be broken up, under a stipulation that the troops of the United States should not cross *Arrojo Hondo*, as long as those of Spain should not the Sabine, or until further orders were given by their respective governments.

Cordero assured Burling that Wilkinson's proposition entirely met his views ; but he added, his hands were tied by the captain general's orders, whom he was bound to consult. Burling had been furnished with a copy of the message to Cordero, which he had on his way, left with Herrera, who, on his return, informed him, that the officer next in command would, on the next day, visit Wilkinson, and every thing should be arranged. It appears that Herrera was less punctilious than Cordero ; for on the following day, the officer brought to Wilkinson Herrera's assent to his proposition.

On the fifth of November, Wilkinson, having received information that the Spanish camp, on the Sabine, would be broken up on that day, began his march towards Natchitoches. Immediately on his arrival there,

he directed Porter to proceed to New-Orleans, with the utmost expedition, and to repair, mount and equip for service every piece of ordnance in the city, to employ all hands in preparing shells, grape, canister and musket cartridges with buck-shot, to have every field piece ready, with hose, harness and drag ropes, and to mount six or eight battering cannons on fort St. Charles and fort St. Louis, below and above the city, and along its front, flanks and rear.

In the meanwhile, the president of the United States began to perceive the object of the conspiracy; but his information was so blended and involved in mystery, that nothing certain could be sought out for pursuit. In this state of uncertainty he thought it best to order to the field of action, a person in whose integrity reliance and confidence could be placed, with instructions to investigate the plot going on, to enter into conferences (for which he was furnished with sufficient credentials) with the civil and military officers of the western states, and with their aid to call on the spot whatever should become necessary to discover the designs of the conspirators, arrest their means, bring their persons to punishment, and call out the force of the country, to suppress any enterprise in which they were found to be engaged. His choice fell on Graham, the secretary of the territory of Orleans.

It being known, at this time, that many boats were in preparation, stores and provisions collected, and an unusual number of suspicious characters in motion on the Ohio, and its tributary streams, orders were given to the governors of the Mississippi and Orleans territories, and to the commander of the land and naval forces there, to be on their guard against surprise, and

in constant readiness to resist any enterprise that might be attempted; and on the eighth of November, instructions had been sent to Wilkinson to hasten an accommodation with the Spanish commander on the Sabine, and fall back with his principal force on the hither bank of the Mississippi; a measure, which we have seen, he had already anticipated.

The report was, that Burr had in contemplation three distinct objects, which might be carried on jointly or separately, and either first, as circumstances might require. One of these was the separation from the union of the portion of country west of the Alleghany mountains—another an attack on Mexico—the last was provided as merely ostensible: it was the settlement of a vast tract of land, heretofore granted to the Baron de Bastrop, on the banks of the Washita river. This was to serve as the pretext of all the preparations of Burr, an allurement for such as really wished for a settlement on that stream, and a cover under which to retreat on the event of a final discomfiture.

Such was the state of information at Washington city, in the latter part of November, when specific measures were openly adopted by government. On the twenty-seventh, the president of the United States issued a proclamation, announcing the existence of a conspiracy, and warning such citizens as might have been led, without due knowledge or consideration, to participate therein, to withdraw and desist therefrom, and calling on all officers, civil and military, to be vigilant and active in suppressing it.

Orders were sent to every important point on the Ohio and Mississippi, from Pittsburgh to the Balize, for the employment of such part of the civil authority,

as might enable them to seize all boats and stores, provided for the enterprise, and arrest all persons concerned. A short time before these orders were received in the state of Ohio, Graham, the president's confidential agent, had been diligently employed in tracing the conspiracy, and had acquired sufficient information to apply for the immediate exertion of the authority of that state to crush the combination. Governor Tiffin and the legislature, with zeal and energy, effected the seizure of all the boats, provisions and other things provided, within their reach.

Thus was the first blow given, materially disabling the enterprise in the onset.

In Kentucky, a premature attempt to bring Burr to justice, without sufficient evidence to convict him, had procured a momentary impression in his favour ; which gave him the opportunity of hastening his equipments. The arrival of the president's proclamation and orders, and the application of Graham, at last awakened the authorities of the state to the truth, and produced the energy and promptitude of which the neighbouring state had given the example. Under an order of the legislature, the militia was instantly ordered to different important points, and measures were taken for effecting whatever could be done ; but a small number of men, in a few boats, had, in the meanwhile, passed the falls of the Ohio, to rendezvous at the mouth of Cumberland river, with others coming down that stream.

Porter had left Natchitoches for New-Orleans, with all the artificers and a company of one hundred men, and had been followed by Cushing with the rest of the forces, leaving only one company behind. Wilkinson,

on his way to New-Orleans, stopped at Natchez, and made application to the executive of the Mississippi territory, for a detachment of five hundred men of its militia, to proceed to New-Orleans, but declining to communicate his motives in making this requisition, was refused. From this place, on the fifteenth of November, he despatched Burling, one of his aids, to Mexico, for the ostensible purpose of apprising the Viceroy of the danger with which his sovereign's dominions were menaced; but, as the general mentions in his memoirs, "on grounds of public duty and professional enterprise to attempt to penetrate the veil which concealed the topographical route to the city of Mexico, and the military defences which intervened, feeling that the equivocal relation of the two countries justified the *ruse*."

Wilkinson reached New-Orleans towards the end of November, and in his first communication to the president of the United States, after his arrival, mentioned, that among his countrymen, he had discovered characters, who had hitherto been distinguished for integrity and patriotism, men of talents, honoured by the confidence of government and distinguished by marks of its regard, who, if not connected with the flagitious plan by active co-operation, approved it, and withheld timely and important information.

Accounts of the requisition made for a detachment of the neighbouring territory, and of the refusal of its executive, were soon received in New-Orleans, and excited much surprise. The inhabitants wondered that, after the amicable adjustment of all difficulties with the Spaniards, the territory of Orleans, with a reasonable force of regular troops and an efficient mi-

litia, well armed and disciplined, should require any aid from the Mississippi territory. As yet, Burr's plans were but partially spoken of, and disbelieved; the people had heard of an apprehended insurrection in some of the western states; but the merchants, who had frequent accounts from above, understood that things were perfectly tranquil there. Surprise was further excited at the appearance of an uncommon number of men, at work on the old fortifications, and on the hearing of a contract for a sufficient number of pickets to enclose the whole city. This and other contracts, entered into since the arrival of Wilkinson, instead of being offered, as was usual, to any who would engage in them on the lowest terms, were entered into secretly, and as if intended to be kept from the public eye.

On the seventh of December, Wilkinson despatched lieutenant Swann of the army, to Jamaica, with a letter to the officer commanding the naval force on that station, informing him of Burr's plans, and that a report was afloat, that the aid of a British naval armament had been either promised or applied for, and warning him and all British military and naval officers, that their interference or any co-operation on their part, would be considered as highly injurious to the United States, and affecting the present amicable relations between the two nations. The communication concluded with the expression of a hope, that the British government would refrain from any interference or co-operation, and prevent any individual from affording aid; and the assurance that the writer would, with all the force under his command, resist any effort of a foreign power to favour Burr's projects.

On the ninth of December, a meeting of the merchants and some of the principal inhabitants was called at the government house, where Claiborne and Wilkinson attended to apprize them of the danger to which the country was exposed. The first said that the object of the preparations of the latter was to defend New-Orleans against a numerous and powerful party, headed by one of the first characters in the union. Wilkinson spoke of the co-operation of the British navy with Burr, and the ultimate destination of the expedition for Mexico, after they had plundered the banks, seized on the shipping, and helped themselves with every thing, which an army of seven thousand men might want.

It was then proposed to the meeting, that the shipping in the river should be detained and the crews discharged, that they might be employed on board of the vessels of the United States. This was immediately agreed to, and a subscription was opened for extra bounty and clothing for such sailors as would enter the public service, and within a short space of time, a considerable sum was raised.

In a letter to the president of the United States, Wilkinson stated he had offered to Hall, the district judge of the United States, and Matthews, one of the territorial judges, on the twelfth and thirteenth, all the testimony he possessed against Burr and Bollman, to the end that the former might be proclaimed for apprehension throughout the United States, and the latter committed to close confinement to secure his testimony, and prevent his correspondence and machinations in aid of Burr's plans. The first proposition was rejected, as "it would be too late, as Burr might

be on his way ;" the second was rejected, as Bollman's offence was bailable, and a writ of habeas corpus would set him at large ; that after some reflections, judge Hall said, " I believe it will be best for the general to exercise his discretion." Matthews did not say any thing, and as they left Wilkinson, he told them he hoped they would not hang him for what he would do, and they both answered in the negative.

On Sunday, the fourteenth, Dr. Erick Bollman was arrested by order of Wilkinson, and hurried to a secret place of confinement, and on the evening of the following day application was made on his behalf, for a writ of habeas corpus, to Sprigg, one of the territorial judges, who declined acting till he could consult Matthews, who could not then be found. On the sixteenth, the writ was obtained from the superior court ; but Bollman was in the meanwhile put on board of a vessel and sent down the river. On the same day, application was made to Workman, the judge of the county of Orleans, for a writ of habeas corpus, in favour of Ogden and Swartwout, who had been arrested a few days before, by order of Wilkinson, at Fort Adams, and were on board of a bomb ketch of the United States, lying before the city. Workman immediately granted the writ, and called on Claiborne to inquire whether he had assented to Wilkinson's proceedings : Claiborne replied he had consented to the arrest of Bollman, and his mind was not made up as to the propriety of that of Ogden and Swartwout. Workman then expatiated on the illegality and evil tendency of such measures, beseeching Claiborne not to permit them, but to use his own authority, as the constitutional guardian of his fellow citizens, to protect

them ; but he was answered that the executive had no authority to liberate those persons, and it was for the judiciary to do it, if they thought fit. Workman added, that he had heard that Wilkinson intended to ship off his prisoners ; and if this was permitted, writs of habeas corpus would prove nugatory.

From the alarm and terror prevalent in the city, the deputy sheriff could procure no boat to take him on board of the ketch, on the day the writ issued. This circumstance was made known, early on the next morning, to Workman, who thereupon directed the deputy sheriff to procure a boat by the offer of a considerable sum of money, for the payment of which he undertook the county would be responsible. The writ was served soon afterwards, and returned at five in the evening by Commodore Shaw and the commanding officer of the ketch, Lieutenant Jones ; Swartwout had been taken from the ketch before the service of the writ. Ogden was produced and discharged, as his detention was justified on the order of Wilkinson only.

On the eighteenth of December, Wilkinson returned the writ of habeas corpus into the superior court, stating that, as commander in chief of the army of the United States, he took upon himself all responsibility for the arrest of Erick Bollman, charged with misprision of treason against the government of the United States, and he had adopted measures for his safe delivery to the government of the United States : that it was after several conversations with the governor and one of the judges of the territory, that he had hazarded this step for the national safety, menaced to its basis by a lawless band of traitors, associated under

Aaron Burr, whose accomplices were extended from New-York to New-Orleans; that no man held in higher reverence the civil authorities of his country; and it was to maintain and perpetuate the holy attributes of the constitution against the uplifted arm of violence, that he had interposed the force of arms in a moment of the utmost peril, to seize upon Bollman, as he should upon all others, *without regard to standing or station*, against whom any proof might arise of a participation in the lawless combination.

This return was afterwards amended, by an averment, that at the time of the writ, Bollman was not in the possession or power of the person to whom it was addressed.

On the following day Ogden was arrested the second time, by the commanding officer of a troop of cavalry of the militia of the territory, in the service of the United States, by whom Alexander was also taken into custody. On the application of Livingston, Workman issued writs of habeas corpus for both prisoners.

Instead of a return, Wilkinson sent a written message to Workman, begging him to accept his return to the superior court, as applicable to the two traitors who were the subjects of his writs. On this Livingston procured from the court a rule that Wilkinson make a further and more explicit return to the writs, or show cause why an attachment should not issue against him.

Workman now called again on Claiborne, and repeated his observations, and recommended that Wilkinson should be opposed by force of arms. He stated that the violent measures of that officer had produced

great discontent, alarm and agitation in the public mind; and, unless such proceeding were effectually opposed, all confidence in government would be at an end. He urged Claiborne to revoke the order by which he had placed the Orleans volunteers under Wilkinson's command, and to call out and arm the rest of the militia force as soon as possible. He stated it as his opinion, that the army would not oppose the civil power when constitutionally brought forth; or that if they did, the governor might soon have men enough to render the opposition ineffectual. He added, that from the laudable conduct of Commodore Shaw and Lieutenant Jones, respecting Ogden, he not only did not apprehend any resistance to the civil authority from the navy, but thought they might be relied on. Similar representations were made to Claiborne by Hall and Mathews; but they were unavailing.

On the twenty-sixth Wilkinson made a second return to the writ of habeas corpus, stating that the body of neither of the prisoners was in his possession or control. On this Livingston moved for process of attachment.

Workman now made an official communication to Claiborne. He began by observing, that the late extraordinary events, which had taken place within the territory, had led to a circumstance which authorized the renewal, in a formal manner, of the request he had so frequently urged in conversation, that the executive would make use of the constitutional force placed under his command, to maintain the laws, and protect his fellow citizens against the unexampled tyranny exercised over them.

He added, it was notorious that the commander in chief of the military forces had, by his own authority, arrested several citizens for civil offences, and had avowed on record, that he had adopted measures to send them out of the territory, openly declaring his determination to usurp the functions of the judiciary, by making himself the only judge of the guilt of the persons he suspected, and asserting in the same manner, and as yet without contradiction, that his measures were taken, after several consultations with the governor.

He proceeded to state, that writs of habeas corpus had been issued from the court of the county of New-Orleans: on one of them, Ogden had been brought up and discharged, but he had been, however, again arrested, by order of the general, together with an officer of the court, who had aided professionally in procuring his release. The general had, in his return to a subsequent writ, issued on his behalf, referred the court to a return made by him to a former writ of the superior court, and in the further return which he had been ordered to make, he had declared that neither of the prisoners was in his power, possession, or custody; but he had not averred what was requisite, in order to exempt him from the penalty of a contempt of court, that these persons were not in his power, possession, or custody, at the time when the writs were served, and, in consequence of the deficiency, the court had been moved for an attachment.

The judge remarked, that although a common case would not require the step he was taking, yet, he deemed it his duty, before any decisive measure

was pursued against a man, who had all the regular force, and in pursuance of the governor's public orders, a great part of that of the territory, at his disposal, to ask whether the executive had the ability to enforce the decrees of the court of the county, and if he had, whether he would deem it expedient to do it in the present instance, or whether the allegation by which he supported these violent measures was well founded?

Not only the conduct and power of Wilkinson, said the judge, but various other circumstances, peculiar to our present situation, the alarm excited in the public mind, the description and character of a large part of the population of the country, might render it dangerous, in the highest degree, to adopt the measure usual in ordinary cases, of calling to the aid of the sheriff the *posse comitatus*, unless it were done with the assurance of being supported by the governor in an efficient manner.

The letter concluded by requesting a precise and speedy answer to the preceding inquiries, and an assurance that, if certain of the governor's support, the judge should forthwith punish, as the law directs, the contempt offered to this court; on the other hand, should the governor not think it practicable or proper to afford his aid, the court and its officers would no longer remain exposed to the contempt or insults of a man whom they are unable to punish or resist.

The legislature met on the twelfth of January. Two days after General Adair arrived in the city, from Tennessee, and reported he had left Burr at Nashville, on the twenty-second of December, with

two flat boats, destined for New-Orleans. In the afternoon of the day of Adair's arrival, the hotel at which he had stopped was invested by one hundred and twenty men, under Lieutenant Colonel Kingsbury, accompanied by one of Wilkinson's aids. Adair was dragged from the dining table, and conducted to head quarters, where he was put in confinement. They beat to arms through the streets, the battalion of the volunteers of Orleans, and a part of the regular troops, paraded through the city, and Workman, Kerr, and Bradford, were arrested and confined. Wilkinson ordered the latter to be released, and the two former were liberated on the following day, on a writ of habeas corpus, issued by the district judge of the United States. Adair was secreted until an opportunity offered to ship him away.

Accounts arrived a few days after, that Burr was at Bayou Pierre, a little above the city of Natchez, with fourteen boats. He had been joined, at the mouth of Cumberland river, by a dozen boats, that had descended the Ohio; there were from eighty to one hundred men with him, and he had about forty stand of arms.

Claiborne made an ineffectual attempt to induce the legislature to pass an act for the suspension of the writ of habeas corpus. The draft of a memorial to be presented to congress, by the territorial legislature, was introduced in its lower house; the object of it was to place the conduct of Wilkinson in its true light before the national council. After an animated debate, which lasted during several days, the memo-

rial was rejected by a majority of seven out of twenty-one members.

On the twenty-eighth, advices were received from Natchez, that on the fifteenth, Claiborne, colonel of the militia of the Mississippi territory, had marched at the head of a large detachment towards the part of the river at which Burr had stopped ; that Burr had written to the secretary of the territory, who exercised the functions of governor, that he was ready to surrender himself to the civil authority ; that the secretary had met him, and they had rode together to Natchez, where Burr gave bond for his appearance before the territorial court, at its next term. He, however, left the territory, and the governor issued a proclamation, offering a reward of two thousand dollars for his apprehension.

In the latter part of that month, Burling, who had been sent by Wilkinson to Mexico, returned. The viceroy had not been the dupe of Wilkinson's *ruse*, and gave a very cold reception to his messenger, who was strictly watched, and permitted to stay but a short time in the country.

Lieutenant Swann, who had been sent to Jamaica, came back about the same time. Admiral Drake observed to Wilkinson, that from the style and manner in which the communication he had received was written, he was at a loss how to answer it ; but he begged him to be assured, that British ships of war would never be employed in any improper service, and that he should ever be ready most cheerfully to obey the orders of his sovereign. Sir Eyre Coote trusted, and sincerely believed, that the representation made to Wilkinson was totally groundless, as his

letter contained the only intelligence received on the subject.

Workman resigned his office, finding that Claiborne paid no attention to his communications.

Towards the middle of March, Burr was arrested, near fort Stoddart, and placed under a strong guard, by whom he was conveyed to Richmond, in Virginia, where he was admitted to bail.

Lieutenant Wilkinson, who had accompanied Pike up the Missouri, now reached New-Orleans. In his report, dated the sixth of April, he stated that the Osage Indians had been left in their village, about the fifteenth of August; after which, Pike's party traced the Osage river to its source, and reached the towns of the Pawnees on the twenty-fifth of September. These Indians had lately been visited by a body of armed Spaniards, from Santa Fe. The flag of Spain was waving over their council room. Pike induced them to substitute that of the United States to it. Proceeding thence, westward, the party came to the Arkansas river, on the fifteenth of October. After a short halt, the lieutenant was detached, with five men, down the stream, to explore the country, and float down to the Mississippi. Pike and the rest of the party sat out for the source of Red river.

The legislature adjourned towards the end of April, after having passed several very important acts. The county courts were abolished; a court was established in each parish, the judge of which was ex officio judge of probates, and acted as clerk, sheriff, and notary. It having been found, that annual sessions of the superior court, out of New-Orleans, were inconvenient, semi-annual ones were directed to be holden

at Lafource, Pointe Coupee, Alexandria, Opelousas and Attakapas. The number of members of the house of representatives was fixed at twenty-five; six of these were to represent the county of Orleans; the counties of German Coast, Acadie, Lafourche, Iberville, Pointe Coupee, Rapides, Opelousas and Attakapas, were to send two members each; and one was to come from each of those of Concordia, Washita, and Nachitoches. The territory was divided into nineteen parishes.

Wilkinson sailed to Virginia towards the middle of May, for the purpose of attending Burr's trial, in Richmond.

On the first of July Pike reached Nachitoches. We have seen that he had sent a small detachment from his party down the Arkansas river, in October. From thence he had travelled westwardly, and rambled through the rocky mountains, till the beginning of the new year, when he reached a branch of the Rio del Norte, which he mistook for one of those of Red river. He was overtaken by two Spanish officers and one hundred men, sent by Don Joachim Allencaster, who commanded at Santa Fe. The officers at the head of the Spanish party were sent to escort Pike and his party to that city, from whence he was informed, they would be conducted, by the most direct route, to the navigable waters of Red river, which they would descend to Nachitoches. Although dubious of the sincerity of this invitation, and believing he was in a situation to defend himself as long as his provisions lasted, or till an opportunity offered for escaping by night; yet, mindful of the pacific disposition of the government of the United

States, and of his instructions in case he reconnoitred a party of Spanish troops, he determined on complying with Don Joachim's request.

On his arrival at Santa Fe, he was informed that Don Nemesio de Salcedo, the captain general of the interior provinces, had given orders that he should be sent, with his men, to the city of Chihuahua, in the province of Biscay, the residence of the captain general. He, accordingly, left Santa Fe on the second day after his arrival, and reached Chihuahua on the twentieth of April.

Here he was compelled to open his trunk, in presence of Don Nemesio, and an Irishman, in the service of Spain. All his official papers, his correspondence with Wilkinson, his diary, the notes he had taken on the geology, topography and climate of the country, and the Indian tribes he had visited, were seized and detained. He was supplied with money, guides, and an escort, and set off for Natchitoches, three days after his arrival at Chihuahua.

In a letter, which Salcedo gave him for Wilkinson, he observed, that the latter could not be ignorant of the repeated representations made by the Spanish minister at Philadelphia, and by the Marquis de Casa Calvo, while he was in Louisiana, warning the government of the United States from extending its expeditions into territories unequivocally belonging to the Catholic king. He added, that the papers taken from Pike afforded evident and incontestible proof of his being guilty of a direct violation of the territorial rights of the crown of Spain, which would have justified his detention, and that of every individual accompanying him, as prisoners; but a desire to give the

utmost latitude to the system of harmony and good understanding subsisting between the two governments, and a hope that such measures would be taken by the officers of the United States, as would prevent any ill consequences resulting from the moderation of those of Spain, had induced him to detain, in the archives of the captainship general, all the papers Pike had presented, and permit him and his party to return home.

Note to page 139.

“THE testimony of Wilkinson was regarded, at last, with contempt, or worse. A young man from the state of Tennessee, having been induced, either by menaces or by money, or by some of those wily stratagems which are ever ready at the hands of the wicked, to make a false affidavit, the purport of which was to prove the guilt of Colonel Burr, in order to justify Wilkinson in his unlawful arrest of him, being sifted in his examination as a witness on the trial before the chief justice, contradicted, point blank, his own affidavit in every material circumstance it contained. Horror-struck at the wickedness displayed, (not so much by him as by the villains who suborned him,) Judge Marshall silenced the unhappy man, and by way of warning to himself and others, said to him, ‘Never open your mouth again in a court of justice.’ What honest man can restrain his indignation at the prosecution, when he reads the sequel? What heart,

imbued with the common spirit of humanity, but must be shocked! The unfortunate young fellow, overwhelmed with shame and remorse, and maddened with despair, put an end to his life with laudanum."

MAR 31 1931



T. B. H. Mason.

